

Calendar No. 204

106TH CONGRESS
1ST Session

H. R. 10

AN ACT

To enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, and other financial service providers, and for other purposes.

JULY 12, 1999

Received; read twice and placed on the calendar

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IN THE SENATE OF THE UNITED STATES

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To enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, and other financial service providers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; PURPOSES; TABLE OF CON-**
2 **TENTS.**

3 (a) SHORT TITLE.—This Act may be cited as the
4 “Financial Services Act of 1999”.

5 (b) PURPOSES.—The purposes of this Act are as fol-
6 lows:

7 (1) To enhance competition in the financial
8 services industry, in order to foster innovation and
9 efficiency.

10 (2) To ensure the continued safety and sound-
11 ness of depository institutions.

12 (3) To provide necessary and appropriate pro-
13 tections for investors and ensure fair and honest
14 markets in the delivery of financial services.

15 (4) To avoid duplicative, potentially conflicting,
16 and overly burdensome regulatory requirements
17 through the creation of a regulatory framework for
18 financial holding companies that respects the diver-
19 gent requirements of each of the component busi-
20 nesses of the holding company, and that is based
21 upon principles of strong functional regulation and
22 enhanced regulatory coordination.

23 (5) To reduce and, to the maximum extent
24 practicable, to eliminate the legal barriers preventing
25 affiliation among depository institutions, securities
26 firms, insurance companies, and other financial serv-

1 ice providers and to provide a prudential framework
 2 for achieving that result.

3 (6) To enhance the availability of financial serv-
 4 ices to citizens of all economic circumstances and in
 5 all geographic areas.

6 (7) To enhance the competitiveness of United
 7 States financial service providers internationally.

8 (8) To ensure compliance by depository institu-
 9 tions with the provisions of the Community Rein-
 10 vestment Act of 1977 and enhance the ability of de-
 11 pository institutions to meet the capital and credit
 12 needs of all citizens and communities, including un-
 13 derserved communities and populations.

14 (c) TABLE OF CONTENTS.—The table of contents for
 15 this Act is as follows:

Sec. 1. Short title; purposes; table of contents.

TITLE I—FACILITATING AFFILIATION AMONG SECURITIES FIRMS, INSURANCE COMPANIES, AND DEPOSITORY INSTITUTIONS

Subtitle A—Affiliations

Sec. 101. Glass-Steagall Act reformed.

Sec. 102. Activity restrictions applicable to bank holding companies which are
not financial holding companies.

Sec. 103. Financial holding companies.

Sec. 104. Operation of State law.

Sec. 105. Mutual bank holding companies authorized.

Sec. 105A. Public meetings for large bank acquisitions and mergers.

Sec. 106. Prohibition on deposit production offices.

Sec. 107. Clarification of branch closure requirements.

Sec. 108. Amendments relating to limited purpose banks.

Sec. 109. GAO study of economic impact on community banks, other small fi-
nancial institutions, insurance agents, and consumers.

Sec. 110. Responsiveness to community needs for financial services.

Sec. 110A. Study of financial modernization's affect on the accessibility of
small business and farm loans.

Subtitle B—Streamlining Supervision of Financial Holding Companies

- Sec. 111. Streamlining financial holding company supervision.
- Sec. 112. Elimination of application requirement for financial holding companies.
- Sec. 113. Authority of State insurance regulator and Securities and Exchange Commission.
- Sec. 114. Prudential safeguards.
- Sec. 115. Examination of investment companies.
- Sec. 116. Limitation on rulemaking, prudential, supervisory, and enforcement authority of the Board.
- Sec. 117. Equivalent regulation and supervision.
- Sec. 118. Prohibition on FDIC assistance to affiliates and subsidiaries.
- Sec. 119. Repeal of savings bank provisions in the Bank Holding Company Act of 1956.
- Sec. 120. Technical amendment.

Subtitle C—Subsidiaries of National Banks

- Sec. 121. Permissible activities for subsidiaries of national banks.
- Sec. 122. Safety and soundness firewalls between banks and their financial subsidiaries.
- Sec. 123. Misrepresentations regarding depository institution liability for obligations of affiliates.
- Sec. 124. Repeal of stock loan limit in Federal Reserve Act.

Subtitle D—Wholesale Financial Holding Companies; Wholesale Financial Institutions

CHAPTER 1—WHOLESALE FINANCIAL HOLDING COMPANIES

- Sec. 131. Wholesale financial holding companies established.
- Sec. 132. Authorization to release reports.
- Sec. 133. Conforming amendments.

CHAPTER 2—WHOLESALE FINANCIAL INSTITUTIONS

- Sec. 136. Wholesale financial institutions.

Subtitle E—Preservation of FTC Authority

- Sec. 141. Amendment to the Bank Holding Company Act of 1956 to modify notification and post-approval waiting period for section 3 transactions.
- Sec. 142. Interagency data sharing.
- Sec. 143. Clarification of status of subsidiaries and affiliates.
- Sec. 144. Annual GAO report.

Subtitle F—National Treatment

- Sec. 151. Foreign banks that are financial holding companies.
- Sec. 152. Foreign banks and foreign financial institutions that are wholesale financial institutions.
- Sec. 153. Representative offices.
- Sec. 154. Reciprocity.

Subtitle G—Federal Home Loan Bank System Modernization

- Sec. 161. Short title.
- Sec. 162. Definitions.
- Sec. 163. Savings association membership.
- Sec. 164. Advances to members; collateral.
- Sec. 165. Eligibility criteria.
- Sec. 166. Management of banks.
- Sec. 167. Resolution Funding Corporation.
- Sec. 168. Capital structure of Federal home loan banks.

Subtitle H—ATM Fee Reform

- Sec. 171. Short title.
- Sec. 172. Electronic fund transfer fee disclosures at any host ATM.
- Sec. 173. Disclosure of possible fees to consumers when ATM card is issued.
- Sec. 174. Feasibility study.
- Sec. 175. No liability if posted notices are damaged.

Subtitle I—Direct Activities of Banks

- Sec. 181. Authority of national banks to underwrite certain municipal bonds.

Subtitle J—Deposit Insurance Funds

- Sec. 186. Study of safety and soundness of funds.
- Sec. 187. Elimination of SAIF and DIF special reserves.

Subtitle K—Miscellaneous Provisions

- Sec. 191. Termination of “know your customer” regulations.
- Sec. 192. Study and report on Federal electronic fund transfers.
- Sec. 193. General Accounting Office study of conflicts of interest.
- Sec. 194. Study of cost of all Federal banking regulations.
- Sec. 195. Study and report on adapting existing legislative requirements to on-line banking and lending.
- Sec. 196. Regulation of uninsured State member banks.
- Sec. 197. Clarification of source of strength doctrine.
- Sec. 198. Interest rates and other charges at interstate branches.
- Sec. 198A. Interstate branches and agencies of foreign banks.
- Sec. 198B. Fair treatment of women by financial advisers.

Subtitle L—Effective Date of Title

- Sec. 199. Effective date.

TITLE II—FUNCTIONAL REGULATION

Subtitle A—Brokers and Dealers

- Sec. 201. Definition of broker.
- Sec. 202. Definition of dealer.
- Sec. 203. Registration for sales of private securities offerings.
- Sec. 204. Information sharing.
- Sec. 205. Treatment of new hybrid products.
- Sec. 206. Definition of excepted banking product.
- Sec. 207. Additional definitions.
- Sec. 208. Government securities defined.
- Sec. 209. Effective date.
- Sec. 210. Rule of construction.

Subtitle B—Bank Investment Company Activities

- Sec. 211. Custody of investment company assets by affiliated bank.
- Sec. 212. Lending to an affiliated investment company.
- Sec. 213. Independent directors.
- Sec. 214. Additional SEC disclosure authority.
- Sec. 215. Definition of broker under the Investment Company Act of 1940.
- Sec. 216. Definition of dealer under the Investment Company Act of 1940.
- Sec. 217. Removal of the exclusion from the definition of investment adviser for
banks that advise investment companies.
- Sec. 218. Definition of broker under the Investment Advisers Act of 1940.
- Sec. 219. Definition of dealer under the Investment Advisers Act of 1940.
- Sec. 220. Interagency consultation.
- Sec. 221. Treatment of bank common trust funds.
- Sec. 222. Investment advisers prohibited from having controlling interest in
registered investment company.
- Sec. 223. Statutory disqualification for bank wrongdoing.
- Sec. 224. Conforming change in definition.
- Sec. 225. Conforming amendment.
- Sec. 226. Church plan exclusion.
- Sec. 227. Effective date.

Subtitle C—Securities and Exchange Commission Supervision of Investment Bank Holding Companies

- Sec. 231. Supervision of investment bank holding companies by the Securities
and Exchange Commission.

Subtitle D—Disclosure of Customer Costs of Acquiring Financial Products

- Sec. 241. Improved and consistent disclosure.

Subtitle E—Banks and Bank Holding Companies

- Sec. 251. Consultation.

TITLE III—INSURANCE

Subtitle A—State Regulation of Insurance

- Sec. 301. State regulation of the business of insurance.
- Sec. 302. Mandatory insurance licensing requirements.
- Sec. 303. Functional regulation of insurance.
- Sec. 304. Insurance underwriting in national banks.
- Sec. 305. Title insurance activities of national banks and their affiliates.
- Sec. 306. Expedited and equalized dispute resolution for Federal regulators.
- Sec. 307. Consumer protection regulations.
- Sec. 308. Certain State affiliation laws preempted for insurance companies and
affiliates.
- Sec. 309. Interagency consultation.
- Sec. 310. Definition of State.

Subtitle B—Redomestication of Mutual Insurers

- Sec. 311. General application.
- Sec. 312. Redomestication of mutual insurers.
- Sec. 313. Effect on State laws restricting redomestication.
- Sec. 314. Other provisions.

- Sec. 315. Definitions.
- Sec. 316. Effective date.

Subtitle C—National Association of Registered Agents and Brokers

- Sec. 321. State flexibility in multistate licensing reforms.
- Sec. 322. National Association of Registered Agents and Brokers.
- Sec. 323. Purpose.
- Sec. 324. Relationship to the Federal Government.
- Sec. 325. Membership.
- Sec. 326. Board of directors.
- Sec. 327. Officers.
- Sec. 328. Bylaws, rules, and disciplinary action.
- Sec. 329. Assessments.
- Sec. 330. Functions of the NAIC.
- Sec. 331. Liability of the Association and the directors, officers, and employees of the Association.
- Sec. 332. Elimination of NAIC oversight.
- Sec. 333. Relationship to State law.
- Sec. 334. Coordination with other regulators.
- Sec. 335. Judicial review.
- Sec. 336. Definitions.

Subtitle D—Rental Car Agency Insurance Activities

- Sec. 341. Standard of regulation for motor vehicle rentals.

Subtitle E—Confidentiality

- Sec. 351. Confidentiality of health and medical information.

TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES

- Sec. 401. Prohibition on new unitary savings and loan holding companies.
- Sec. 402. Retention of “Federal” in name of converted Federal savings association.

TITLE V—PRIVACY

Subtitle A—Disclosure of Nonpublic Personal Information

- Sec. 501. Protection of nonpublic personal information.
- Sec. 502. Obligations with respect to disclosures of personal information.
- Sec. 503. Disclosure of institution privacy policy.
- Sec. 504. Rulemaking.
- Sec. 505. Enforcement.
- Sec. 506. Fair Credit Reporting Act amendment.
- Sec. 507. Relation to other provisions.
- Sec. 508. Study of information sharing among financial affiliates.
- Sec. 509. Definitions.
- Sec. 510. Effective date.

Subtitle B—Fraudulent Access to Financial Information

- Sec. 521. Privacy protection for customer information of financial institutions.
- Sec. 522. Administrative enforcement.
- Sec. 523. Criminal penalty.
- Sec. 524. Relation to State laws.

Sec. 525. Agency guidance.
 Sec. 526. Reports.
 Sec. 527. Definitions.

1 **TITLE I—FACILITATING AFFILI-**
 2 **ATION AMONG SECURITIES**
 3 **FIRMS, INSURANCE COMPA-**
 4 **NIES, AND DEPOSITORY IN-**
 5 **STITUTIONS**

6 **Subtitle A—Affiliations**

7 **SEC. 101. GLASS-STEAGALL ACT REFORMED.**

8 (a) SECTION 20 REPEALED.—Section 20 of the
 9 Banking Act of 1933 (12 U.S.C. 377) (commonly referred
 10 to as the “Glass-Steagall Act”) is repealed.

11 (b) SECTION 32 REPEALED.—Section 32 of the
 12 Banking Act of 1933 (12 U.S.C. 78) is repealed.

13 **SEC. 102. ACTIVITY RESTRICTIONS APPLICABLE TO BANK**
 14 **HOLDING COMPANIES WHICH ARE NOT FI-**
 15 **NANCIAL HOLDING COMPANIES.**

16 (a) IN GENERAL.—Section 4(c)(8) of the Bank Hold-
 17 ing Company Act of 1956 (12 U.S.C. 1843(c)(8)) is
 18 amended to read as follows:

19 “(8) shares of any company the activities of
 20 which had been determined by the Board by regula-
 21 tion or order under this paragraph as of the day be-
 22 fore the date of the enactment of the Financial Serv-
 23 ices Act of 1999, to be so closely related to banking
 24 as to be a proper incident thereto (subject to such

1 terms and conditions contained in such regulation or
2 order, unless modified by the Board);”.

3 (b) CONFORMING CHANGES TO OTHER STATUTES.—

4 (1) AMENDMENT TO THE BANK HOLDING COM-
5 PANY ACT AMENDMENTS OF 1970.—Section 105 of
6 the Bank Holding Company Act Amendments of
7 1970 (12 U.S.C. 1850) is amended by striking “, to
8 engage directly or indirectly in a nonbanking activity
9 pursuant to section 4 of such Act,”.

10 (2) AMENDMENT TO THE BANK SERVICE COM-
11 PANY ACT.—Section 4(f) of the Bank Service Com-
12 pany Act (12 U.S.C. 1864(f)) is amended by strik-
13 ing the period and adding at the end the following:
14 “as of the day before the date of the enactment of
15 the Financial Services Act of 1999.”.

16 **SEC. 103. FINANCIAL HOLDING COMPANIES.**

17 (a) IN GENERAL.—The Bank Holding Company Act
18 of 1956 is amended by inserting after section 5 (12 U.S.C.
19 1844) the following new section:

20 **“SEC. 6. FINANCIAL HOLDING COMPANIES.**

21 **“(a) FINANCIAL HOLDING COMPANY DEFINED.—**
22 **For purposes of this section, the term ‘financial holding**
23 **company’ means a bank holding company which meets the**
24 **requirements of subsection (b).**

1 “(b) ELIGIBILITY REQUIREMENTS FOR FINANCIAL
2 HOLDING COMPANIES.—

3 “(1) IN GENERAL.—No bank holding company
4 may engage in any activity or directly or indirectly
5 acquire or retain shares of any company under this
6 section unless the bank holding company meets the
7 following requirements:

8 “(A) All of the subsidiary depository insti-
9 tutions of the bank holding company are well
10 capitalized.

11 “(B) All of the subsidiary depository insti-
12 tutions of the bank holding company are well
13 managed.

14 “(C) All of the subsidiary depository insti-
15 tutions of the bank holding company have
16 achieved a rating of ‘satisfactory record of
17 meeting community credit needs’, or better, at
18 the most recent examination of each such insti-
19 tution.

20 “(D) The company has filed with the
21 Board a declaration that the company elects to
22 be a financial holding company and certifying
23 that the company meets the requirements of
24 subparagraphs (A), (B), and (C).

1 “(2) FOREIGN BANKS AND COMPANIES.—For
2 purposes of paragraph (1), the Board shall establish
3 and apply comparable capital and other operating
4 standards to a foreign bank that operates a branch
5 or agency or owns or controls a bank or commercial
6 lending company in the United States, and any com-
7 pany that owns or controls such foreign bank, giving
8 due regard to the principle of national treatment
9 and equality of competitive opportunity.

10 “(3) LIMITED EXCLUSIONS FROM COMMUNITY
11 NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DE-
12 POSITORY INSTITUTIONS.—Any depository institu-
13 tion acquired by a bank holding company during the
14 12-month period preceding the submission of a no-
15 tice under paragraph (1)(D) and any depository in-
16 stitution acquired after the submission of such no-
17 tice may be excluded for purposes of paragraph
18 (1)(C) during the 12-month period beginning on the
19 date of such acquisition if—

20 “(A) the bank holding company has sub-
21 mitted an affirmative plan to the appropriate
22 Federal banking agency to take such action as
23 may be necessary in order for such institution
24 to achieve a rating of ‘satisfactory record of

1 meeting community credit needs', or better, at
2 the next examination of the institution; and

3 “(B) the plan has been accepted by such
4 agency.

5 “(c) ENGAGING IN ACTIVITIES THAT ARE FINANCIAL
6 IN NATURE.—

7 “(1) FINANCIAL ACTIVITIES.—

8 “(A) IN GENERAL.—Notwithstanding sec-
9 tion 4(a), a financial holding company may en-
10 gage in any activity, and acquire and retain the
11 shares of any company engaged in any activity,
12 that the Board has determined (by regulation
13 or order and in accordance with subparagraph
14 (B)) to be—

15 “(i) financial in nature or incidental
16 to such financial activities; or

17 “(ii) complementary to activities au-
18 thorized under this subsection to the ex-
19 tent that the amount of such complemen-
20 tary activities remains small.

21 “(B) COORDINATION BETWEEN THE
22 BOARD AND THE SECRETARY OF THE TREAS-
23 URY.—

24 “(i) PROPOSALS RAISED BEFORE THE
25 BOARD.—

1 “(I) CONSULTATION.—The
2 Board shall notify the Secretary of
3 the Treasury of, and consult with the
4 Secretary of the Treasury concerning,
5 any request, proposal, or application
6 under this subsection, including a reg-
7 ulation or order proposed under para-
8 graph (4), for a determination of
9 whether an activity is financial in na-
10 ture or incidental to such a financial
11 activity.

12 “(II) TREASURY VIEW.—The
13 Board shall not determine that any
14 activity is financial in nature or inci-
15 dental to a financial activity under
16 this subsection if the Secretary of the
17 Treasury notifies the Board in writ-
18 ing, not later than 30 days after the
19 date of receipt of the notice described
20 in subclause (I) (or such longer period
21 as the Board determines to be appro-
22 priate in light of the circumstances)
23 that the Secretary of the Treasury be-
24 lieves that the activity is not financial

1 in nature or incidental to a financial
2 activity.

3 “(ii) PROPOSALS RAISED BY THE
4 TREASURY.—

5 “(I) TREASURY RECOMMENDA-
6 TION.—The Secretary of the Treasury
7 may, at any time, recommend in writ-
8 ing that the Board find an activity to
9 be financial in nature or incidental to
10 a financial activity.

11 “(II) TIME PERIOD FOR BOARD
12 ACTION.—Not later than 30 days
13 after the date of receipt of a written
14 recommendation from the Secretary of
15 the Treasury under subclause (I) (or
16 such longer period as the Secretary of
17 the Treasury and the Board deter-
18 mine to be appropriate in light of the
19 circumstances), the Board shall deter-
20 mine whether to initiate a public rule-
21 making proposing that the subject
22 recommended activity be found to be
23 financial in nature or incidental to a
24 financial activity under this sub-
25 section, and shall notify the Secretary

1 of the Treasury in writing of the de-
2 termination of the Board and, in the
3 event that the Board determines not
4 to seek public comment on the pro-
5 posal, the reasons for that determina-
6 tion.

7 “(2) FACTORS TO BE CONSIDERED.—In deter-
8 mining whether an activity is financial in nature or
9 incidental to financial activities, the Board shall take
10 into account—

11 “(A) the purposes of this Act and the Fi-
12 nancial Services Act of 1999;

13 “(B) changes or reasonably expected
14 changes in the marketplace in which bank hold-
15 ing companies compete;

16 “(C) changes or reasonably expected
17 changes in the technology for delivering finan-
18 cial services; and

19 “(D) whether such activity is necessary or
20 appropriate to allow a bank holding company
21 and the affiliates of a bank holding company
22 to—

23 “(i) compete effectively with any com-
24 pany seeking to provide financial services
25 in the United States;

1 “(ii) use any available or emerging
2 technological means, including any applica-
3 tion necessary to protect the security or ef-
4 ficacy of systems for the transmission of
5 data or financial transactions, in providing
6 financial services; and

7 “(iii) offer customers any available or
8 emerging technological means for using fi-
9 nancial services.

10 “(3) ACTIVITIES THAT ARE FINANCIAL IN NA-
11 TURE.—The following activities shall be considered
12 to be financial in nature:

13 “(A) Lending, exchanging, transferring, in-
14 vesting for others, or safeguarding money or se-
15 curities.

16 “(B) Insuring, guaranteeing, or indem-
17 nifying against loss, harm, damage, illness, dis-
18 ability, or death, or providing and issuing annu-
19 ities, and acting as principal, agent, or broker
20 for purposes of the foregoing.

21 “(C) Providing financial, investment, or
22 economic advisory services, including advising
23 an investment company (as defined in section 3
24 of the Investment Company Act of 1940).

1 “(D) Issuing or selling instruments rep-
2 resenting interests in pools of assets permissible
3 for a bank to hold directly.

4 “(E) Underwriting, dealing in, or making
5 a market in securities.

6 “(F) Engaging in any activity that the
7 Board has determined, by order or regulation
8 that is in effect on the date of the enactment
9 of the Financial Services Act of 1999, to be so
10 closely related to banking or managing or con-
11 trolling banks as to be a proper incident thereto
12 (subject to the same terms and conditions con-
13 tained in such order or regulation, unless modi-
14 fied by the Board).

15 “(G) Engaging, in the United States, in
16 any activity that—

17 “(i) a bank holding company may en-
18 gage in outside the United States; and

19 “(ii) the Board has determined, under
20 regulations issued pursuant to section
21 4(c)(13) of this Act (as in effect on the
22 day before the date of the enactment of the
23 Financial Services Act of 1999) to be
24 usual in connection with the transaction of

1 banking or other financial operations
2 abroad.

3 “(H) Directly or indirectly acquiring or
4 controlling, whether as principal, on behalf of
5 one or more entities (including entities, other
6 than a depository institution, that the bank
7 holding company controls) or otherwise, shares,
8 assets, or ownership interests (including with-
9 out limitation debt or equity securities, partner-
10 ship interests, trust certificates or other instru-
11 ments representing ownership) of a company or
12 other entity, whether or not constituting control
13 of such company or entity, engaged in any ac-
14 tivity not authorized pursuant to this section
15 if—

16 “(i) the shares, assets, or ownership
17 interests are not acquired or held by a de-
18 pository institution;

19 “(ii) such shares, assets, or ownership
20 interests are acquired and held by an affil-
21 iate of the bank holding company that is a
22 registered broker or dealer that is engaged
23 in securities underwriting activities, or an
24 affiliate of such broker or dealer, as part
25 of a bona fide underwriting or investment

1 banking activity, including investment ac-
2 tivities engaged in for the purpose of ap-
3 preciation and ultimate resale or disposi-
4 tion of the investment;

5 “(iii) such shares, assets, or owner-
6 ship interests are held only for such a pe-
7 riod of time as will permit the sale or dis-
8 position thereof on a reasonable basis con-
9 sistent with the nature of the activities de-
10 scribed in clause (ii); and

11 “(iv) during the period such shares,
12 assets, or ownership interests are held, the
13 bank holding company does not actively
14 participate in the day to day management
15 or operation of such company or entity, ex-
16 cept insofar as necessary to achieve the ob-
17 jectives of clause (ii).

18 “(I) Directly or indirectly acquiring or con-
19 trolling, whether as principal, on behalf of one
20 or more entities (including entities, other than
21 a depository institution or subsidiary of a de-
22 pository institution, that the bank holding com-
23 pany controls) or otherwise, shares, assets, or
24 ownership interests (including without limita-
25 tion debt or equity securities, partnership inter-

1 ests, trust certificates or other instruments rep-
2 resenting ownership) of a company or other en-
3 tity, whether or not constituting control of such
4 company or entity, engaged in any activity not
5 authorized pursuant to this section if—

6 “(i) the shares, assets, or ownership
7 interests are not acquired or held by a de-
8 pository institution or a subsidiary of a de-
9 pository institution;

10 “(ii) such shares, assets, or ownership
11 interests are acquired and held by an in-
12 surance company that is predominantly en-
13 gaged in underwriting life, accident and
14 health, or property and casualty insurance
15 (other than credit-related insurance) or
16 providing and issuing annuities;

17 “(iii) such shares, assets, or owner-
18 ship interests represent an investment
19 made in the ordinary course of business of
20 such insurance company in accordance
21 with relevant State law governing such in-
22 vestments; and

23 “(iv) during the period such shares,
24 assets, or ownership interests are held, the
25 bank holding company does not directly or

1 indirectly participate in the day-to-day
2 management or operation of the company
3 or entity except insofar as necessary to
4 achieve the objectives of clauses (ii) and
5 (iii).

6 “(4) AUTHORIZATION OF NEW FINANCIAL AC-
7 TIVITIES.—The Board shall, by regulation or order
8 and in accordance with paragraph (1)(B), define,
9 consistent with the purposes of this Act, the fol-
10 lowing activities as, and the extent to which such ac-
11 tivities are, financial in nature or incidental to ac-
12 tivities which are financial in nature:

13 “(A) Lending, exchanging, transferring, in-
14 vesting for others, or safeguarding financial as-
15 sets other than money or securities.

16 “(B) Providing any device or other instru-
17 mentality for transferring money or other finan-
18 cial assets.

19 “(C) Arranging, effecting, or facilitating fi-
20 nancial transactions for the account of third
21 parties.

22 “(5) POST-CONSUMMATION NOTIFICATION.—

23 “(A) IN GENERAL.—A financial holding
24 company that acquires any company, or com-
25 mences any activity, pursuant to this subsection

1 shall provide written notice to the Board de-
2 scribing the activity commenced or conducted
3 by the company acquired no later than 30 cal-
4 endar days after commencing the activity or
5 consummating the acquisition.

6 “(B) APPROVAL NOT REQUIRED FOR CER-
7 TAIN FINANCIAL ACTIVITIES.—Except as pro-
8 vided in section 4(j) with regard to the acquisi-
9 tion of a savings association or in paragraph
10 (6) of this subsection, a financial holding com-
11 pany may commence any activity, or acquire
12 any company, pursuant to paragraph (3) or any
13 regulation prescribed or order issued under
14 paragraph (4), without prior approval of the
15 Board.

16 “(6) NOTICE REQUIRED FOR LARGE COMBINA-
17 TIONS.—

18 “(A) IN GENERAL.—No financial holding
19 company shall directly or indirectly acquire, and
20 no company that becomes a financial holding
21 company shall directly or indirectly acquire con-
22 trol of, any company in the United States, in-
23 cluding through merger, consolidation, or other
24 type of business combination, that—

1 “(i) is engaged in activities permitted
2 under this subsection or subsection (g);
3 and

4 “(ii) has consolidated total assets in
5 excess of \$40,000,000,000,
6 unless such holding company has provided no-
7 tice to the Board, not later than 60 days prior
8 to such proposed acquisition or prior to becom-
9 ing a financial holding company, and during
10 that time period, or such longer time period not
11 exceeding an additional 60 days, as established
12 by the Board, the Board has not issued a notice
13 disapproving the proposed acquisition or reten-
14 tion.

15 “(B) FACTORS FOR CONSIDERATION.—In
16 reviewing any prior notice filed under this para-
17 graph, the Board shall take into
18 consideration—

19 “(i) whether the company is in com-
20 pliance with all applicable criteria set forth
21 in subsection (b) and the provisions of sub-
22 section (d);

23 “(ii) whether the proposed combina-
24 tion represents an undue aggregation of
25 resources;

1 “(iii) whether the proposed combina-
2 tion poses a risk to the deposit insurance
3 system;

4 “(iv) whether the proposed combina-
5 tion poses a risk to State insurance guar-
6 anty funds;

7 “(v) whether the proposed combina-
8 tion can reasonably be expected to be in
9 the best interests of depositors or policy-
10 holders of the respective entities;

11 “(vi) whether the proposed trans-
12 action can reasonably be expected to fur-
13 ther the purposes of this Act and produce
14 benefits to the public; and

15 “(vii) whether, and the extent to
16 which, the proposed combination poses an
17 undue risk to the stability of the financial
18 system in the United States.

19 “(C) REQUIRED INFORMATION.—The
20 Board may disapprove any prior notice filed
21 under this paragraph if the company submitting
22 such notice neglects, fails, or refuses to furnish
23 to the Board all relevant information required
24 by the Board.

1 “(D) SOLICITATION OF VIEWS OF OTHER
2 SUPERVISORY AGENCIES.—

3 “(i) IN GENERAL.—Upon receiving a
4 prior notice under this paragraph, in order
5 to provide for the submission of their views
6 and recommendations, the Board shall give
7 notice of the proposal to—

8 “(I) the appropriate Federal
9 banking agency of any bank involved;

10 “(II) the appropriate functional
11 regulator of any functionally regulated
12 nondepository institution (as defined
13 in section 5(c)(1)(C)) involved; and

14 “(III) the Secretary of the Treas-
15 ury, the Attorney General, and the
16 Federal Trade Commission.

17 “(ii) TIMING.—The views and rec-
18 ommendations of any agency provided no-
19 tice under this paragraph shall be sub-
20 mitted to the Board not later than 30 cal-
21 endar days after the date on which notice
22 to the agency was given, unless the Board
23 determines that another shorter time pe-
24 riod is appropriate.

1 “(d) PROVISIONS APPLICABLE TO FINANCIAL HOLD-
2 ING COMPANIES THAT FAIL TO MEET REQUIREMENTS.—

3 “(1) IN GENERAL.—If the Board finds, after
4 notice from or consultation with the appropriate
5 Federal banking agency, that a financial holding
6 company is not in compliance with the requirements
7 of subparagraph (A), (B), or (C) of subsection
8 (b)(1), the Board shall give notice of such finding to
9 the company.

10 “(2) AGREEMENT TO CORRECT CONDITIONS RE-
11 QUIRED.—Within 45 days of receipt by a financial
12 holding company of a notice given under paragraph
13 (1) (or such additional period as the Board may per-
14 mit), the company shall execute an agreement ac-
15 ceptable to the Board to comply with the require-
16 ments applicable to a financial holding company.

17 “(3) AUTHORITY TO IMPOSE LIMITATIONS.—
18 Until the conditions described in a notice to a finan-
19 cial holding company under paragraph (1) are
20 corrected—

21 “(A) the Board may impose such limita-
22 tions on the conduct or activities of the com-
23 pany or any affiliate of the company as the
24 Board determines to be appropriate under the
25 circumstances; and

1 “(B) the appropriate Federal banking
2 agency may impose such limitations on the con-
3 duct or activities of an affiliated depository in-
4 stitution or subsidiary of a depository institu-
5 tion as the appropriate Federal banking agency
6 determines to be appropriate under the cir-
7 cumstances.

8 “(4) FAILURE TO CORRECT.—If, after receiving
9 a notice under paragraph (1), a financial holding
10 company does not—

11 “(A) execute and implement an agreement
12 in accordance with paragraph (2);

13 “(B) comply with any limitations imposed
14 under paragraph (3);

15 “(C) in the case of a notice of failure to
16 comply with subsection (b)(1)(A), restore each
17 depository institution subsidiary to well capital-
18 ized status before the end of the 180-day period
19 beginning on the date such notice is received by
20 the company (or such other period permitted by
21 the Board); or

22 “(D) in the case of a notice of failure to
23 comply with subparagraph (B) or (C) of sub-
24 section (b)(1), restore compliance with any such
25 subparagraph by the date the next examination

1 of the depository institution subsidiary is com-
2 pleted or by the end of such other period as the
3 Board determines to be appropriate,
4 the Board may require such company, under such
5 terms and conditions as may be imposed by the
6 Board and subject to such extension of time as may
7 be granted in the Board’s discretion, to divest con-
8 trol of any depository institution subsidiary or, at
9 the election of the financial holding company, in-
10 stead to cease to engage in any activity conducted by
11 such company or its subsidiaries pursuant to this
12 section.

13 “(5) CONSULTATION.—In taking any action
14 under this subsection, the Board shall consult with
15 all relevant Federal and State regulatory agencies.

16 “(e) SAFEGUARDS FOR BANK SUBSIDIARIES.—A fi-
17 nancial holding company shall assure that—

18 “(1) the procedures of the holding company for
19 identifying and managing financial and operational
20 risks within the company, and the subsidiaries of
21 such company, adequately protect the subsidiaries of
22 such company which are insured depository institu-
23 tions or wholesale financial institution from such
24 risks;

1 “(2) the holding company has reasonable poli-
2 cies and procedures to preserve the separate cor-
3 porate identity and limited liability of such company
4 and the subsidiaries of such company, for the pro-
5 tection of the company’s subsidiary insured deposi-
6 tory institutions and wholesale financial institutions;
7 and

8 “(3) the holding company complies with this
9 section.

10 “(f) AUTHORITY TO RETAIN LIMITED NON-
11 FINANCIAL ACTIVITIES AND AFFILIATIONS.—

12 “(1) IN GENERAL.—Notwithstanding section
13 4(a), a company that is not a bank holding company
14 or a foreign bank (as defined in section 1(b)(7) of
15 the International Banking Act of 1978) and becomes
16 a financial holding company after the date of the en-
17 actment of the Financial Services Act of 1999 may
18 continue to engage in any activity and retain direct
19 or indirect ownership or control of shares of a com-
20 pany engaged in any activity if—

21 “(A) the holding company lawfully was en-
22 gaged in the activity or held the shares of such
23 company on September 30, 1997;

1 “(B) the holding company is predomi-
2 nantly engaged in financial activities as defined
3 in paragraph (2); and

4 “(C) the company engaged in such activity
5 continues to engage only in the same activities
6 that such company conducted on September 30,
7 1997, and other activities permissible under
8 this Act.

9 “(2) PREDOMINANTLY FINANCIAL.—For pur-
10 poses of this subsection, a company is predominantly
11 engaged in financial activities if the annual gross
12 revenues derived by the holding company and all
13 subsidiaries of the holding company (excluding reve-
14 nues derived from subsidiary depository institu-
15 tions), on a consolidated basis, from engaging in ac-
16 tivities that are financial in nature or are incidental
17 to activities that are financial in nature under sub-
18 section (c) represent at least 85 percent of the con-
19 solidated annual gross revenues of the company.

20 “(3) NO EXPANSION OF GRANDFATHERED COM-
21 MERCIAL ACTIVITIES THROUGH MERGER OR CON-
22 SOLIDATION.—A financial holding company that en-
23 gages in activities or holds shares pursuant to this
24 subsection, or a subsidiary of such financial holding
25 company, may not acquire, in any merger, consolida-

1 tion, or other type of business combination, assets of
2 any other company which is engaged in any activity
3 which the Board has not determined to be financial
4 in nature or incidental to activities that are financial
5 in nature under subsection (c), except this para-
6 graph shall not apply with respect to a company that
7 owns a broadcasting station licensed under title III
8 of the Communications Act of 1934 and the shares
9 of which have been controlled by an insurance com-
10 pany since January 1, 1998.

11 “(4) CONTINUING REVENUE LIMITATION ON
12 GRANDFATHERED COMMERCIAL ACTIVITIES.—Not-
13 withstanding any other provision of this subsection,
14 a financial holding company may continue to engage
15 in activities or hold shares in companies pursuant to
16 this subsection only to the extent that the aggregate
17 annual gross revenues derived from all such activi-
18 ties and all such companies does not exceed 15 per-
19 cent of the consolidated annual gross revenues of the
20 financial holding company (excluding revenues de-
21 rived from subsidiary depository institutions).

22 “(5) CROSS MARKETING RESTRICTIONS APPLI-
23 CABLE TO COMMERCIAL ACTIVITIES.—A depository
24 institution controlled by a financial holding company
25 shall not—

1 “(A) offer or market, directly or through
2 any arrangement, any product or service of a
3 company whose activities are conducted or
4 whose shares are owned or controlled by the fi-
5 nancial holding company pursuant to this sub-
6 section or subparagraph (H) or (I) of sub-
7 section (c)(3); or

8 “(B) permit any of its products or services
9 to be offered or marketed, directly or through
10 any arrangement, by or through any company
11 described in subparagraph (A).

12 “(6) TRANSACTIONS WITH NONFINANCIAL AF-
13 FILIATES.—A depository institution controlled by a
14 financial holding company may not engage in a cov-
15 ered transaction (as defined by section 23A(b)(7) of
16 the Federal Reserve Act) with any affiliate con-
17 trolled by the company pursuant to section 10(c),
18 this subsection, or subparagraph (H) or (I) of sub-
19 section (c)(3).

20 “(7) SUNSET OF GRANDFATHER.—A financial
21 holding company engaged in any activity, or retain-
22 ing direct or indirect ownership or control of shares
23 of a company, pursuant to this subsection, shall ter-
24 minate such activity and divest ownership or control
25 of the shares of such company before the end of the

1 10-year period beginning on the date of the enact-
2 ment of the Financial Services Act of 1999. The
3 Board may, upon application by a financial holding
4 company, extend such 10-year period by a period not
5 to exceed an additional 5 years if such extension
6 would not be detrimental to the public interest.

7 “(g) DEVELOPING ACTIVITIES.—A financial holding
8 company may engage directly or indirectly, or acquire
9 shares of any company engaged, in any activity that the
10 Board has not determined to be financial in nature or inci-
11 dental to financial activities under subsection (c) if—

12 “(1) the holding company reasonably concludes
13 that the activity is financial in nature or incidental
14 to financial activities;

15 “(2) the gross revenues from all activities con-
16 ducted under this subsection represent less than 5
17 percent of the consolidated gross revenues of the
18 holding company;

19 “(3) the aggregate total assets of all companies
20 the shares of which are held under this subsection
21 do not exceed 5 percent of the holding company’s
22 consolidated total assets;

23 “(4) the total capital invested in activities con-
24 ducted under this subsection represents less than 5

1 percent of the consolidated total capital of the hold-
2 ing company;

3 “(5) neither the Board nor the Secretary of the
4 Treasury has determined that the activity is not fi-
5 nancial in nature or incidental to financial activities
6 under subsection (c);

7 “(6) the holding company is not required to
8 provide prior written notice of the transaction to the
9 Board under subsection (c)(6); and

10 “(7) the holding company provides written noti-
11 fication to the Board describing the activity com-
12 menced or conducted by the company acquired no
13 later than 10 business days after commencing the
14 activity or consummating the acquisition.”.

15 (b) FACTORS FOR CONSIDERATION IN REVIEWING
16 APPLICATION BY FINANCIAL HOLDING COMPANY TO AC-
17 QUIRE BANK.—Section 3(c) of the Bank Holding Com-
18 pany Act of 1956 (12 U.S.C. 1842(c)) is amended by add-
19 ing at the end the following new paragraph:

20 “(6) ‘TOO BIG TO FAIL’ FACTOR.—In consid-
21 ering an acquisition, merger, or consolidation under
22 this section involving a financial holding company or
23 a company that would be any such holding company
24 upon the consummation of the transaction, the
25 Board shall consider whether, and the extent to

1 which, the proposed acquisition, merger, or consoli-
 2 dation poses an undue risk to the stability of the fi-
 3 nancial system of the United States.”.

4 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

5 (1) Section 2 of the Bank Holding Company
 6 Act of 1956 (12 U.S.C. 1841) is amended by adding
 7 at the end the following new subsection:

8 “(p) INSURANCE COMPANY.—For purposes of sec-
 9 tions 5, 6, and 10, the term ‘insurance company’ includes
 10 any person engaged in the business of insurance to the
 11 extent of such activities.”.

12 (2) Section 4(j) of the Bank Holding Company
 13 Act of 1956 (12 U.S.C. 1843(j)) is amended—

14 (A) in paragraph (1)(A), by inserting “or
 15 in any complementary activity under section
 16 6(c)(1)(B)” after “subsection (c)(8) or (a)(2)”;
 17 and

18 (B) in paragraph (3)—

19 (i) by inserting “, other than any
 20 complementary activity under section
 21 6(c)(1)(B),” after “to engage in any activ-
 22 ity”; and

23 (ii) by inserting “or a company en-
 24 gaged in any complementary activity under

1 section 6(c)(1)(B)” after “insured depository
2 institution”.

3 (d) REPORT.—

4 (1) IN GENERAL.—By the end of the 4-year pe-
5 riod beginning on the date of the enactment of this
6 Act and every 4 years thereafter, the Board of Gov-
7 ernors of the Federal Reserve System and the Sec-
8 retary of the Treasury shall submit a joint report to
9 the Congress containing a summary of new activities
10 which are financial in nature, including grand-
11 fathered commercial activities, in which any financial
12 holding company is engaged pursuant to subsection
13 (c)(1) or (f) of section 6 of the Bank Holding Com-
14 pany Act of 1956 (as added by subsection (a)).

15 (2) OTHER CONTENTS.—Each report submitted
16 to the Congress pursuant to paragraph (1) shall also
17 contain the following:

18 (A) A discussion of actions by the Board
19 of Governors of the Federal Reserve System
20 and the Secretary of the Treasury, whether by
21 regulation, order, interpretation, or guideline or
22 by approval or disapproval of an application,
23 with regard to activities of financial holding
24 companies which are incidental to activities fi-

1 nancial in nature or complementary to such fi-
2 nancial activities.

3 (B) An analysis and discussion of the risks
4 posed by commercial activities of financial hold-
5 ing companies to the safety and soundness of
6 affiliate depository institutions.

7 (C) An analysis and discussion of the ef-
8 fect of mergers and acquisitions under section
9 6 of the Bank Holding Company Act of 1956
10 on market concentration in the financial serv-
11 ices industry.

12 (D) An analysis and discussion, by the
13 Board and the Secretary in consultation with
14 the other Federal banking agencies (as defined
15 in section 3(z) of the Federal Deposit Insurance
16 Act), of the impact of the implementation of
17 this Act, and the amendments made by this
18 Act, on the extent of meeting community credit
19 needs and capital availability under the Com-
20 munity Reinvestment Act of 1977.

21 **SEC. 104. OPERATION OF STATE LAW.**

22 (a) AFFILIATIONS.—

23 (1) IN GENERAL.—Except as provided in para-
24 graph (2), no State may, by statute, regulation,
25 order, interpretation, or other action, prevent or re-

1 strict an insured depository institution or wholesale
2 financial institution, or a subsidiary or affiliate
3 thereof, from being affiliated directly or indirectly or
4 associated with any person or entity, as authorized
5 or permitted by this Act or any other provision of
6 Federal law.

7 (2) INSURANCE.—With respect to affiliations
8 between insured depository institutions or wholesale
9 financial institutions, or any subsidiary or affiliate
10 thereof, and persons or entities engaged in the busi-
11 ness of insurance, paragraph (1) does not prohibit—

12 (A) any State from requiring any person
13 or entity that proposes to acquire control of an
14 entity that is engaged in the business of insur-
15 ance and domiciled in that State (hereafter in
16 this subparagraph referred to as the “insurer”)
17 to furnish to the insurance regulatory authority
18 of that State, not later than 60 days before the
19 effective date of the proposed acquisition—

20 (i) the name and address of each per-
21 son by whom, or on whose behalf, the af-
22 filiation referred to in this subparagraph is
23 to be effected (hereafter in this subpara-
24 graph referred to as the “acquiring
25 party”);

1 (ii) if the acquiring party is an indi-
2 vidual, his or her principal occupation and
3 all offices and positions held during the 5
4 years preceding the date of notification,
5 and any conviction of crimes other than
6 minor traffic violations during the 10 years
7 preceding the date of notification;

8 (iii) if the acquiring party is not an
9 individual—

10 (I) a report of the nature of its
11 business operations during the 5 years
12 preceding the date of notification, or
13 for such shorter period as such person
14 and any predecessors thereof shall
15 have been in existence;

16 (II) an informative description of
17 the business intended to be done by
18 the acquiring party and any sub-
19 sidiary thereof; and

20 (III) a list of all individuals who
21 are, or who have been selected to be-
22 come, directors or executive officers of
23 the acquiring party or who perform,
24 or will perform, functions appropriate
25 to such positions, including, for each

1 such individual, the information re-
2 quired by clause (ii);

3 (iv) the source, nature, and amount of
4 the consideration used, or to be used, in ef-
5 fecting the merger or other acquisition of
6 control, a description of any transaction
7 wherein funds were, or are to be, obtained
8 for any such purpose, and the identity of
9 persons furnishing such consideration, ex-
10 cept that, if a source of such consideration
11 is a loan made in the lender's ordinary
12 course of business, the identity of the lend-
13 er shall remain confidential if the person
14 filing such statement so requests;

15 (v) fully audited financial information
16 as to the earnings and financial condition
17 of each acquiring party for the 5 fiscal
18 years preceding the date of notification of
19 each such acquiring party, or for such less-
20 er period as such acquiring party and any
21 predecessors thereof shall have been in ex-
22 istence, and similar unaudited information
23 as of a date not earlier than 90 days be-
24 fore the date of notification, except that, in
25 the case of an acquiring party that is an

1 insurer actively engaged in the business of
2 insurance, the financial statements of such
3 insurer need not be audited, but such audit
4 may be required if the need therefor is de-
5 termined by the insurance regulatory au-
6 thority of the State;

7 (vi) any plans or proposals that each
8 acquiring party may have to liquidate such
9 insurer, to sell its assets, or to merge or
10 consolidate it with any person or to make
11 any other material change in its business
12 or corporate structure or management;

13 (vii) the number of shares of any se-
14 curity of the insurer that each acquiring
15 party proposes to acquire, the terms of any
16 offer, request, invitation, agreement, or ac-
17 quisition, and a statement as to the meth-
18 od by which the fairness of the proposal
19 was arrived at;

20 (viii) the amount of each class of any
21 security of the insurer that is beneficially
22 owned or concerning which there is a right
23 to acquire beneficial ownership by each ac-
24 quiring party;

1 (ix) a full description of any contracts,
2 arrangements, or understandings with re-
3 spect to any security of the insurer in
4 which any acquiring party is involved, in-
5 cluding transfer of any of the securities,
6 joint ventures, loan or option arrange-
7 ments, puts or calls, guarantees of loans,
8 guarantees against loss or guarantees of
9 profits, division of losses or profits, or the
10 giving or withholding of proxies, and iden-
11 tification of the persons with whom such
12 contracts, arrangements, or under-
13 standings have been entered into;

14 (x) a description of the purchase of
15 any security of the insurer during the 12-
16 month period preceding the date of notifi-
17 cation by any acquiring party, including
18 the dates of purchase, names of the pur-
19 chasers, and consideration paid, or agreed
20 to be paid, therefor;

21 (xi) a description of any recommenda-
22 tions to purchase any security of the in-
23 surer made during the 12-month period
24 preceding the date of notification by any
25 acquiring party or by any person based

1 upon interviews or at the suggestion of
2 such acquiring party;

3 (xii) copies of all tender offers for, re-
4 quests or invitations for tenders of, ex-
5 change offers for and agreements to ac-
6 quire or exchange any securities of the in-
7 surer and, if distributed, of additional so-
8 liciting material relating thereto; and

9 (xiii) the terms of any agreement,
10 contract, or understanding made with any
11 broker-dealer as to solicitation of securities
12 of the insurer for tender and the amount
13 of any fees, commissions, or other com-
14 pensation to be paid to broker-dealers with
15 regard thereto;

16 (B) in the case of a person engaged in the
17 business of insurance which is the subject of an
18 acquisition or change or continuation in control,
19 the State of domicile of such person from re-
20 viewing or taking action (including approval or
21 disapproval) with regard to the acquisition or
22 change or continuation in control, as long as
23 the State reviews and actions—

24 (i) are completed by the end of the
25 60-day period beginning on the later of the

1 date the State received notice of the pro-
2 posed action or the date the State received
3 the information required under State law
4 regarding such acquisition or change or
5 continuation in control;

6 (ii) do not have the effect of discrimi-
7 nating, intentionally or unintentionally,
8 against an insured depository institution or
9 affiliate thereof or against any other per-
10 son based upon affiliation with an insured
11 depository institution; and

12 (iii) are based on standards or re-
13 quirements relating to solvency or manage-
14 rial fitness;

15 (C) any State from requiring an entity
16 that is acquiring control of an entity that is en-
17 gaged in the business of insurance and domi-
18 ciled in that State to maintain or restore the
19 capital requirements of that insurance entity to
20 the level required under the capital regulations
21 of general applicability in that State to avoid
22 the requirement of preparing and filing with the
23 insurance regulatory authority of that State a
24 plan to increase the capital of the entity, except
25 that any determination by the State insurance

1 regulatory authority with respect to such re-
2 quirement shall be made not later than 60 days
3 after the date of notification under subpara-
4 graph (A);

5 (D) any State from taking actions with re-
6 spect to the receivership or conservatorship of
7 any insurance company;

8 (E) any State from restricting a change in
9 the ownership of stock in an insurance com-
10 pany, or a company formed for the purpose of
11 controlling such insurance company, for a pe-
12 riod of not more than 3 years beginning on the
13 date of the conversion of such company from
14 mutual to stock form; or

15 (F) any State from requiring an organiza-
16 tion which has been eligible at any time since
17 January 1, 1987, to claim the special deduction
18 provided by section 833 of the Internal Revenue
19 Code of 1986 to meet certain conditions in
20 order to undergo, as determined by the State,
21 a reorganization, recapitalization, conversion,
22 merger, consolidation, sale or other disposition
23 of substantial operating assets, demutualization,
24 dissolution, or to undertake other similar ac-
25 tions and which is governed under a State stat-

1 ute enacted on May 22, 1998, relating to hos-
2 pital, medical, and dental service corporation
3 conversions.

4 (3) PRESERVATION OF STATE ANTITRUST AND
5 GENERAL CORPORATE LAWS.—

6 (A) IN GENERAL.—Subject to subsection
7 (c) and the nondiscrimination provisions con-
8 tained in such subsection, no provision in para-
9 graph (1) shall be construed as affecting State
10 laws, regulations, orders, interpretations, or
11 other actions of general applicability relating to
12 the governance of corporations, partnerships,
13 limited liability companies or other business as-
14 sociations incorporated or formed under the
15 laws of that State or domiciled in that State, or
16 the applicability of the antitrust laws of any
17 State or any State law that is similar to the
18 antitrust laws.

19 (B) DEFINITION.—The term “antitrust
20 laws” has the same meaning as in subsection
21 (a) of the first section of the Clayton Act, and
22 includes section 5 of the Federal Trade Com-
23 mission Act to the extent that such section 5
24 relates to unfair methods of competition.

25 (b) ACTIVITIES.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (3), and except with respect to insurance
3 sales, solicitation, and cross marketing activities,
4 which shall be governed by paragraph (2), no State
5 may, by statute, regulation, order, interpretation, or
6 other action, prevent or restrict an insured deposi-
7 tory institution, wholesale financial institution, or
8 subsidiary or affiliate thereof from engaging directly
9 or indirectly, either by itself or in conjunction with
10 a subsidiary, affiliate, or any other entity or person,
11 in any activity authorized or permitted under this
12 Act.

13 (2) INSURANCE SALES.—

14 (A) IN GENERAL.—In accordance with the
15 legal standards for preemption set forth in the
16 decision of the Supreme Court of the United
17 States in *Barnett Bank of Marion County N.A.*
18 *v. Nelson*, 517 U.S. 25 (1996), no State may,
19 by statute, regulation, order, interpretation, or
20 other action, prevent or significantly interfere
21 with the ability of an insured depository institu-
22 tion or wholesale financial institution, or a sub-
23 sidiary or affiliate thereof, to engage, directly or
24 indirectly, either by itself or in conjunction with
25 a subsidiary, affiliate, or any other party, in

1 any insurance sales, solicitation, or cross-mar-
2 keting activity.

3 (B) CERTAIN STATE LAWS PRESERVED.—

4 Notwithstanding subparagraph (A), a State
5 may impose any of the following restrictions, or
6 restrictions which are substantially the same as
7 but no more burdensome or restrictive than
8 those in each of the following clauses:

9 (i) Restrictions prohibiting the rejection
10 of an insurance policy by an insured
11 depository institution, wholesale financial
12 institution, or any subsidiary or affiliate
13 thereof, solely because the policy has been
14 issued or underwritten by any person who
15 is not associated with such insured depository
16 institution or wholesale financial institution,
17 or any subsidiary or affiliate thereof,
18 when such insurance is required in connection
19 with a loan or extension of credit.

20 (ii) Restrictions prohibiting a requirement
21 for any debtor, insurer, or insurance
22 agent or broker to pay a separate charge
23 in connection with the handling of insurance
24 that is required in connection with a
25 loan or other extension of credit or the

1 provision of another traditional banking
2 product by an insured depository institu-
3 tion, wholesale financial institution, or any
4 subsidiary or affiliate thereof, unless such
5 charge would be required when the insured
6 depository institution or wholesale financial
7 institution, or any subsidiary or affiliate
8 thereof, is the licensed insurance agent or
9 broker providing the insurance.

10 (iii) Restrictions prohibiting the use of
11 any advertisement or other insurance pro-
12 motional material by an insured depository
13 institution or wholesale financial institu-
14 tion, or any subsidiary or affiliate thereof,
15 that would cause a reasonable person to
16 believe mistakenly that—

17 (I) a State or the Federal Gov-
18 ernment is responsible for the insur-
19 ance sales activities of, or stands be-
20 hind the credit of, the institution, af-
21 filiate, or subsidiary; or

22 (II) a State, or the Federal Gov-
23 ernment guarantees any returns on
24 insurance products, or is a source of
25 payment on any insurance obligation

1 of or sold by the institution, affiliate,
2 or subsidiary;

3 (iv) Restrictions prohibiting the pay-
4 ment or receipt of any commission or bro-
5 kerage fee or other valuable consideration
6 for services as an insurance agent or
7 broker to or by any person, unless such
8 person holds a valid State license regard-
9 ing the applicable class of insurance at the
10 time at which the services are performed,
11 except that, in this clause, the term “serv-
12 ices as an insurance agent or broker” does
13 not include a referral by an unlicensed per-
14 son of a customer or potential customer to
15 a licensed insurance agent or broker that
16 does not include a discussion of specific in-
17 surance policy terms and conditions.

18 (v) Restrictions prohibiting any com-
19 pensation paid to or received by any indi-
20 vidual who is not licensed to sell insurance,
21 for the referral of a customer that seeks to
22 purchase, or seeks an opinion or advice on,
23 any insurance product to a person that
24 sells or provides opinions or advice on such

1 product, based on the purchase of insur-
2 ance by the customer.

3 (vi) Restrictions prohibiting the re-
4 lease of the insurance information of a cus-
5 tomer (defined as information concerning
6 the premiums, terms, and conditions of in-
7 surance coverage, including expiration
8 dates and rates, and insurance claims of a
9 customer contained in the records of the
10 insured depository institution or wholesale
11 financial institution, or a subsidiary or af-
12 filiate thereof) to any person or entity
13 other than an officer, director, employee,
14 agent, subsidiary, or affiliate of an insured
15 depository institution or a wholesale finan-
16 cial institution, for the purpose of soliciting
17 or selling insurance, without the express
18 consent of the customer, other than a pro-
19 vision that prohibits—

20 (I) a transfer of insurance infor-
21 mation to an unaffiliated insurance
22 company, agent, or broker in connec-
23 tion with transferring insurance in
24 force on existing insureds of the in-
25 sured depository institution or whole-

1 sale financial institution, or subsidiary
2 or affiliate thereof, or in connection
3 with a merger with or acquisition of
4 an unaffiliated insurance company,
5 agent, or broker; or

6 (II) the release of information as
7 otherwise authorized by State or Fed-
8 eral law.

9 (vii) Restrictions prohibiting the use
10 of health information obtained from the in-
11 surance records of a customer for any pur-
12 pose, other than for its activities as a li-
13 censed agent or broker, without the ex-
14 press consent of the customer.

15 (viii) Restrictions prohibiting the ex-
16 tension of credit or any product or service
17 that is equivalent to an extension of credit,
18 lease or sale of property of any kind, or
19 furnishing of any services or fixing or vary-
20 ing the consideration for any of the fore-
21 going, on the condition or requirement that
22 the customer obtain insurance from an in-
23 sured depository institution, wholesale fi-
24 nancial institution, a subsidiary or affiliate
25 thereof, or a particular insurer, agent, or

1 broker, other than a prohibition that would
2 prevent any insured depository institution
3 or wholesale financial institution, or any
4 subsidiary or affiliate thereof—

5 (I) from engaging in any activity
6 described in this clause that would not
7 violate section 106 of the Bank Hold-
8 ing Company Act Amendments of
9 1970, as interpreted by the Board of
10 Governors of the Federal Reserve Sys-
11 tem; or

12 (II) from informing a customer
13 or prospective customer that insur-
14 ance is required in order to obtain a
15 loan or credit, that loan or credit ap-
16 proval is contingent upon the procure-
17 ment by the customer of acceptable
18 insurance, or that insurance is avail-
19 able from the insured depository insti-
20 tution or wholesale financial institu-
21 tion, or any subsidiary or affiliate
22 thereof.

23 (ix) Restrictions requiring, when an
24 application by a consumer for a loan or
25 other extension of credit from an insured

1 depository institution or wholesale financial
2 institution is pending, and insurance is of-
3 fered or sold to the consumer or is re-
4 quired in connection with the loan or ex-
5 tension of credit by the insured depository
6 institution or wholesale financial institu-
7 tion or any affiliate or subsidiary thereof,
8 that a written disclosure be provided to the
9 consumer or prospective customer indi-
10 cating that his or her choice of an insur-
11 ance provider will not affect the credit de-
12 cision or credit terms in any way, except
13 that the insured depository institution or
14 wholesale financial institution may impose
15 reasonable requirements concerning the
16 creditworthiness of the insurance provider
17 and scope of coverage chosen.

18 (x) Restrictions requiring clear and
19 conspicuous disclosure, in writing, where
20 practicable, to the customer prior to the
21 sale of any insurance policy that such
22 policy—

23 (I) is not a deposit;

24 (II) is not insured by the Federal

25 Deposit Insurance Corporation;

1 (III) is not guaranteed by the in-
2 sured depository institution or whole-
3 sale financial institution or, if appro-
4 priate, its subsidiaries or affiliates or
5 any person soliciting the purchase of
6 or selling insurance on the premises
7 thereof; and

8 (IV) where appropriate, involves
9 investment risk, including potential
10 loss of principal.

11 (xi) Restrictions requiring that, when
12 a customer obtains insurance (other than
13 credit insurance or flood insurance) and
14 credit from an insured depository institu-
15 tion or wholesale financial institution, or
16 its subsidiaries or affiliates, or any person
17 soliciting the purchase of or selling insur-
18 ance on the premises thereof, the credit
19 and insurance transactions be completed
20 through separate documents.

21 (xii) Restrictions prohibiting, when a
22 customer obtains insurance (other than
23 credit insurance or flood insurance) and
24 credit from an insured depository institu-
25 tion or wholesale financial institution or its

1 subsidiaries or affiliates, or any person so-
2 liciting the purchase of or selling insurance
3 on the premises thereof, inclusion of the
4 expense of insurance premiums in the pri-
5 mary credit transaction without the ex-
6 press written consent of the customer.

7 (xiii) Restrictions requiring mainte-
8 nance of separate and distinct books and
9 records relating to insurance transactions,
10 including all files relating to and reflecting
11 consumer complaints, and requiring that
12 such insurance books and records be made
13 available to the appropriate State insur-
14 ance regulator for inspection upon reason-
15 able notice.

16 (C) LIMITATIONS.—

17 (i) OCC DEFERENCE.—Section 306(e)
18 does not apply with respect to any State
19 statute, regulation, order, interpretation,
20 or other action regarding insurance sales,
21 solicitation, or cross marketing activities
22 described in subparagraph (A) that was
23 issued, adopted, or enacted before Sep-
24 tember 3, 1998, and that is not described
25 in subparagraph (B).

1 (ii) NONDISCRIMINATION.—Subsection
2 (c) does not apply with respect to any
3 State statute, regulation, order, interpreta-
4 tion, or other action regarding insurance
5 sales, solicitation, or cross marketing ac-
6 tivities described in subparagraph (A) that
7 was issued, adopted, or enacted before
8 September 3, 1998, and that is not de-
9 scribed in subparagraph (B).

10 (iii) CONSTRUCTION.—Nothing in this
11 paragraph shall be construed to limit the
12 applicability of the decision of the Supreme
13 Court in Barnett Bank of Marion County
14 N.A. v. Nelson, 116 S. Ct. 1103 (1996)
15 with respect to a State statute, regulation,
16 order, interpretation, or other action that
17 is not described in subparagraph (B).

18 (iv) LIMITATION ON INFERENCES.—
19 Nothing in this paragraph shall be con-
20 strued to create any inference with respect
21 to any State statute, regulation, order, in-
22 terpretation, or other action that is not re-
23 ferred to or described in this paragraph.

24 (3) INSURANCE ACTIVITIES OTHER THAN
25 SALES.—State statutes, regulations, interpretations,

1 orders, and other actions shall not be preempted
2 under subsection (b)(1) to the extent that they—

3 (A) relate to, or are issued, adopted, or en-
4 acted for the purpose of regulating the business
5 of insurance in accordance with the Act of
6 March 9, 1945 (commonly known as the
7 “McCarran-Ferguson Act”);

8 (B) apply only to persons or entities that
9 are not insured depository institutions or whole-
10 sale financial institutions, but that are directly
11 engaged in the business of insurance (except
12 that they may apply to depository institutions
13 engaged in providing savings bank life insur-
14 ance as principal to the extent of regulating
15 such insurance);

16 (C) do not relate to or directly or indirectly
17 regulate insurance sales, solicitations, or cross-
18 marketing activities; and

19 (D) are not prohibited under subsection
20 (c).

21 (4) FINANCIAL ACTIVITIES OTHER THAN INSUR-
22 ANCE.—No State statute, regulation, interpretation,
23 order, or other action shall be preempted under sub-
24 section (b)(1) to the extent that—

1 (A) it does not relate to, and is not issued
2 and adopted, or enacted for the purpose of reg-
3 ulating, directly or indirectly, insurance sales,
4 solicitations, or cross marketing activities cov-
5 ered under paragraph (2);

6 (B) it does not relate to, and is not issued
7 and adopted, or enacted for the purpose of reg-
8 ulating, directly or indirectly, the business of in-
9 surance activities other than sales, solicitations,
10 or cross marketing activities, covered under
11 paragraph (3);

12 (C) it does not relate to securities inves-
13 tigations or enforcement actions referred to in
14 subsection (d); and

15 (D) it—

16 (i) does not distinguish by its terms
17 between insured depository institutions,
18 wholesale financial institutions, and sub-
19 sidiaries and affiliates thereof engaged in
20 the activity at issue and other persons or
21 entities engaged in the same activity in a
22 manner that is in any way adverse with re-
23 spect to the conduct of the activity by any
24 such insured depository institution, whole-
25 sale financial institution, or subsidiary or

1 affiliate thereof engaged in the activity at
2 issue;

3 (ii) as interpreted or applied, does not
4 have, and will not have, an impact on de-
5 pository institutions, wholesale financial in-
6 stitutions, or subsidiaries or affiliates
7 thereof engaged in the activity at issue, or
8 any person or entity affiliated therewith,
9 that is substantially more adverse than its
10 impact on other persons or entities en-
11 gaged in the same activity that are not in-
12 sured depository institutions, wholesale fi-
13 nancial institutions, or subsidiaries or af-
14 filiates thereof, or persons or entities affili-
15 ated therewith;

16 (iii) does not effectively prevent a de-
17 pository institution, wholesale financial in-
18 stitution, or subsidiary or affiliate thereof
19 from engaging in activities authorized or
20 permitted by this Act or any other provi-
21 sion of Federal law; and

22 (iv) does not conflict with the intent
23 of this Act generally to permit affiliations
24 that are authorized or permitted by Fed-
25 eral law.

1 (c) NONDISCRIMINATION.—Except as provided in any
2 restrictions described in subsection (b)(2)(B), no State
3 may, by statute, regulation, order, interpretation, or other
4 action, regulate the insurance activities authorized or per-
5 mitted under this Act or any other provision of Federal
6 law of an insured depository institution or wholesale finan-
7 cial institution, or subsidiary or affiliate thereof, to the
8 extent that such statute, regulation, order, interpretation,
9 or other action—

10 (1) distinguishes by its terms between insured
11 depository institutions or wholesale financial institu-
12 tions, or subsidiaries or affiliates thereof, and other
13 persons or entities engaged in such activities, in a
14 manner that is in any way adverse to any such in-
15 sured depository institution or wholesale financial in-
16 stitution, or subsidiary or affiliate thereof;

17 (2) as interpreted or applied, has or will have
18 an impact on depository institutions or wholesale fi-
19 nancial institutions, or subsidiaries or affiliates
20 thereof, that is substantially more adverse than its
21 impact on other persons or entities providing the
22 same products or services or engaged in the same
23 activities that are not insured depository institu-
24 tions, wholesale financial institutions, or subsidiaries

1 or affiliates thereof, or persons or entities affiliated
2 therewith;

3 (3) effectively prevents a depository institution
4 or wholesale financial institution, or subsidiary or af-
5 filiate thereof, from engaging in insurance activities
6 authorized or permitted by this Act or any other
7 provision of Federal law; or

8 (4) conflicts with the intent of this Act gen-
9 erally to permit affiliations that are authorized or
10 permitted by Federal law between insured depository
11 institutions or wholesale financial institutions, or
12 subsidiaries or affiliates thereof, and persons and en-
13 tities engaged in the business of insurance.

14 (d) LIMITATION.—Subsections (a) and (b) shall not
15 be construed to affect the jurisdiction of the securities
16 commission (or any agency or office performing like func-
17 tions) of any State, under the laws of such State—

18 (1) to investigate and bring enforcement ac-
19 tions, consistent with section 18(c) of the Securities
20 Act of 1933, with respect to fraud or deceit or un-
21 lawful conduct by any person, in connection with se-
22 curities or securities transactions; or

23 (2) to require the registration of securities or
24 the licensure or registration of brokers, dealers, or
25 investment advisers (consistent with section 203A of

1 the Investment Advisers Act of 1940), or the associ-
 2 ated persons of a broker, dealer, or investment ad-
 3 viser (consistent with such section 203A).

4 (e) DEFINITIONS.—For purposes of this section, the
 5 following definitions shall apply:

6 (1) INSURED DEPOSITORY INSTITUTION.—The
 7 term “insured depository institution” includes any
 8 foreign bank that maintains a branch, agency, or
 9 commercial lending company in the United States.

10 (2) STATE.—The term “State” means any
 11 State of the United States, the District of Columbia,
 12 any territory of the United States, Puerto Rico,
 13 Guam, American Samoa, the Trust Territory of the
 14 Pacific Islands, the Virgin Islands, and the Northern
 15 Mariana Islands.

16 **SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHOR-**
 17 **IZED.**

18 Section 3(g)(2) of the Bank Holding Company Act
 19 of 1956 (12 U.S.C. 1842(g)(2)) is amended to read as
 20 follows:

21 “(2) REGULATIONS.—A bank holding company
 22 organized as a mutual holding company shall be reg-
 23 ulated on terms, and shall be subject to limitations,
 24 comparable to those applicable to any other bank
 25 holding company.”.

1 **SEC. 105A. PUBLIC MEETINGS FOR LARGE BANK ACQUISI-**
2 **TIONS AND MERGERS.**

3 (a) BANK HOLDING COMPANY ACT OF 1956.—Sec-
4 tion 3(c)(2) of the Bank Holding Company Act of 1956
5 (12 U.S.C. 1842(c)(2)) is amended—

6 (1) by striking “FACTORS.—In every case” and
7 inserting “FACTORS.—

8 “(A) IN GENERAL.—In every case”; and

9 (2) by adding at the end the following new sub-
10 paragraph:

11 “(B) PUBLIC MEETINGS.—In each case in-
12 volving one or more insured depository institu-
13 tions each of which has total assets of
14 \$1,000,000,000 or more, the Board shall, as
15 necessary and on a timely basis, conduct public
16 meetings in one or more areas where the Board
17 believes, in the sole discretion of the Board,
18 there will be a substantial public impact.”.

19 (b) FEDERAL DEPOSIT INSURANCE ACT.—Section
20 18(c) of the Federal Deposit Insurance Act (12 U.S.C.
21 1828(c)) is amended by adding at the end the following
22 new paragraph:

23 “(12) PUBLIC MEETINGS.—In each merger trans-
24 action involving one or more insured depository institu-
25 tions each of which has total assets of \$1,000,000,000 or
26 more, the responsible agency shall, as necessary and on

1 a timely basis, conduct public meetings in one or more
2 areas where the agency believes, in the sole discretion of
3 the agency, there will be a substantial public impact.”.

4 (c) NATIONAL BANK CONSOLIDATION AND MERGER
5 ACT.—The National Bank Consolidation and Merger Act
6 (12 U.S.C. 215 et seq.) is amended by adding at the end
7 the following new section:

8 **“SEC. 6. PUBLIC MEETINGS FOR LARGE BANK CONSOLIDA-**
9 **TIONS AND MERGERS.**

10 “In each case of a consolidation or merger under this
11 Act involving one or more banks each of which has total
12 assets of \$1,000,000,000 or more, the Comptroller shall,
13 as necessary and on a timely basis, conduct public meet-
14 ings in one or more areas where the Comptroller believes,
15 in the sole discretion of the Comptroller, there will be a
16 substantial public impact.”.

17 (d) HOME OWNERS’ LOAN ACT.—Section 10(e) of
18 the Home Owners’ Loan Act (12 U.S.C. 1463) is amended
19 by adding at the end the following new paragraph:

20 “(7) PUBLIC MEETINGS FOR LARGE DEPOSI-
21 TORY INSTITUTION ACQUISITIONS AND MERGERS.—

22 In each case involving one or more insured deposi-
23 tory institutions each of which has total assets of
24 \$1,000,000,000 or more, the Director shall, as nec-
25 essary and on a timely basis, conduct public meet-

1 ings in one or more areas where the Director be-
2 lieves, in the sole discretion of the Director, there
3 will be a substantial public impact.”.

4 **SEC. 106. PROHIBITION ON DEPOSIT PRODUCTION OF-**
5 **FICES.**

6 (a) IN GENERAL.—Section 109(d) of the Riegle-Neal
7 Interstate Banking and Branching Efficiency Act of 1994
8 (12 U.S.C. 1835a(d)) is amended—

9 (1) by inserting “, the Financial Services Act of
10 1999,” after “pursuant to this title”; and

11 (2) by inserting “or such Act” after “made by
12 this title”.

13 (b) TECHNICAL AND CONFORMING AMENDMENT.—
14 Section 109(e)(4) of the Riegle-Neal Interstate Banking
15 and Branching Efficiency Act of 1994 (12 U.S.C.
16 1835a(e)(4)) is amended by inserting “and any branch of
17 a bank controlled by an out-of-State bank holding com-
18 pany (as defined in section 2(o)(7) of the Bank Holding
19 Company Act of 1956)” before the period.

20 **SEC. 107. CLARIFICATION OF BRANCH CLOSURE REQUIRE-**
21 **MENTS.**

22 Section 42(d)(4)(A) of the Federal Deposit Insurance
23 Act (12 U.S.C. 1831r–1(d)(4)(A)) is amended by inserting
24 “and any bank controlled by an out-of-State bank holding

1 company (as defined in section 2(o)(7) of the Bank Hold-
 2 ing Company Act of 1956)” before the period.

3 **SEC. 108. AMENDMENTS RELATING TO LIMITED PURPOSE**
 4 **BANKS.**

5 (a) IN GENERAL.—Section 4(f) of the Bank Holding
 6 Company Act of 1956 (12 U.S.C. 1843(f)) is amended—

7 (1) in paragraph (2)(A)(ii)—

8 (A) by striking “and” at the end of sub-
 9 clause (IX);

10 (B) by inserting “and” after the semicolon
 11 at the end of subclause (X); and

12 (C) by inserting after subclause (X) the
 13 following new subclause:

14 “(XI) assets that are derived
 15 from, or are incidental to, consumer
 16 lending activities in which institutions
 17 described in subparagraph (F) or (H)
 18 of section 2(c)(2) are permitted to en-
 19 gage,”;

20 (2) in paragraph (2), by striking subparagraph
 21 (B) and inserting the following new subparagraphs:

22 “(B) any bank subsidiary of such company
 23 engages in any activity in which the bank was
 24 not lawfully engaged as of March 5, 1987, un-

1 less the bank is well managed and well capital-
2 ized;

3 “(C) any bank subsidiary of such company
4 both—

5 “(i) accepts demand deposits or de-
6 posits that the depositor may withdraw by
7 check or similar means for payment to
8 third parties; and

9 “(ii) engages in the business of mak-
10 ing commercial loans (and, for purposes of
11 this clause, loans made in the ordinary
12 course of a credit card operation shall not
13 be treated as commercial loans); or

14 “(D) after the date of the enactment of the
15 Competitive Equality Amendments of 1987, any
16 bank subsidiary of such company permits any
17 overdraft (including any intraday overdraft), or
18 incurs any such overdraft in such bank’s ac-
19 count at a Federal Reserve bank, on behalf of
20 an affiliate, other than an overdraft described
21 in paragraph (3).”; and

22 (3) by striking paragraphs (3) and (4) and in-
23 serting the following new paragraphs:

1 “(3) PERMISSIBLE OVERDRAFTS DESCRIBED.—

2 For purposes of paragraph (2)(D), an overdraft is
3 described in this paragraph if—

4 “(A) such overdraft results from an inad-
5 vertent computer or accounting error that is be-
6 yond the control of both the bank and the affil-
7 iate;

8 “(B) such overdraft—

9 “(i) is permitted or incurred on behalf
10 of an affiliate which is monitored by, re-
11 ports to, and is recognized as a primary
12 dealer by the Federal Reserve Bank of
13 New York; and

14 “(ii) is fully secured, as required by
15 the Board, by bonds, notes, or other obli-
16 gations which are direct obligations of the
17 United States or on which the principal
18 and interest are fully guaranteed by the
19 United States or by securities and obliga-
20 tions eligible for settlement on the Federal
21 Reserve book entry system; or

22 “(C) such overdraft—

23 “(i) is incurred on behalf of an affil-
24 iate solely in connection with an activity
25 that is so closely related to banking, or

1 managing or controlling banks, as to be a
2 proper incident thereto, to the extent the
3 bank incurring the overdraft and the affil-
4 iate on whose behalf the overdraft is in-
5 curred each document that the overdraft is
6 incurred for such purpose; and

7 “(ii) does not cause the bank to vio-
8 late any provision of section 23A or 23B of
9 the Federal Reserve Act, either directly, in
10 the case of a member bank, or by virtue of
11 section 18(j) of the Federal Deposit Insur-
12 ance Act, in the case of a nonmember
13 bank.

14 “(4) DIVESTITURE IN CASE OF LOSS OF EX-
15 EMPTION.—If any company described in paragraph
16 (1) fails to qualify for the exemption provided under
17 such paragraph by operation of paragraph (2), such
18 exemption shall cease to apply to such company and
19 such company shall divest control of each bank it
20 controls before the end of the 180-day period begin-
21 ning on the date that the company receives notice
22 from the Board that the company has failed to con-
23 tinue to qualify for such exemption, unless before
24 the end of such 180-day period, the company has—

“(B) implemented procedures that are reasonably adapted to avoid the reoccurrence of such condition or activity.

7 The issuance of any notice under this paragraph
8 that relates to the activities of a bank shall not be
9 construed as affecting the authority of the bank to
10 continue to engage in such activities until the expira-
11 tion of such 180-day period.”.

(b) INDUSTRIAL LOAN COMPANIES AFFILIATE OVER-
DRAFTS.—Section 2(c)(2)(H) of the Bank Holding Com-
pany Act of 1956 (12 U.S.C. 1841(c)(2)(H)) is amended
by inserting before the period at the end “, or that is oth-
erwise permissible for a bank controlled by a company de-
scribed in section 4(f)(1)”.

18 SEC. 109. GAO STUDY OF ECONOMIC IMPACT ON COMMU-
19 NITY BANKS, OTHER SMALL FINANCIAL IN-
20 STITUTIONS, INSURANCE AGENTS, AND CON-
21 SUMERS.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study of the projected economic impact and the actual economic impact that the enactment of this Act will have on financial institutions,

1 including community banks, registered brokers and deal-
2 ers and insurance companies, which have total assets of
3 \$100,000,000 or less, insurance agents, and consumers.

4 (b) REPORTS TO THE CONGRESS.—

5 (1) IN GENERAL.—The Comptroller General of
6 the United States shall submit reports to the Con-
7 gress, at the times required under paragraph (2),
8 containing the findings and conclusions of the
9 Comptroller General with regard to the study re-
10 quired under subsection (a) and such recommenda-
11 tions for legislative or administrative action as the
12 Comptroller General may determine to be appro-
13 priate.

14 (2) TIMING OF REPORTS.—The Comptroller
15 General shall submit—

16 (A) an interim report before the end of the
17 6-month period beginning after the date of the
18 enactment of this Act;

19 (B) another interim report before the end
20 of the next 6-month period; and

21 (C) a final report before the end of the 1-
22 year period after such second 6-month period.”.

1 **SEC. 110. RESPONSIVENESS TO COMMUNITY NEEDS FOR FI-**
2 **NANCIAL SERVICES.**

3 (a) STUDY.—The Secretary of the Treasury, in con-
4 sultation with the Federal banking agencies (as defined
5 in section 3(z) of the Federal Deposit Insurance Act),
6 shall conduct a study of the extent to which adequate serv-
7 ices are being provided as intended by the Community Re-
8 investment Act of 1977, including services in low- and
9 moderate-income neighborhoods and for persons of modest
10 means, as a result of the enactment of this Act.

11 (b) REPORT.—Before the end of the 2-year period be-
12 ginning on the date of the enactment of this Act, the Sec-
13 retary of the Treasury, in consultation with the Federal
14 banking agencies, shall submit a report to the Congress
15 on the study conducted pursuant to subsection (a) and
16 shall include such recommendations as the Secretary de-
17 termines to be appropriate for administrative and legisla-
18 tive action with respect to institutions covered under the
19 Community Reinvestment Act of 1977.

20 **SEC. 110A. STUDY OF FINANCIAL MODERNIZATION'S AF-**
21 **FECT ON THE ACCESSIBILITY OF SMALL**
22 **BUSINESS AND FARM LOANS.**

23 (a) STUDY.—The Secretary of the Treasury, in con-
24 sultation with the Federal banking agencies (as defined
25 in Section 3(z) of the Federal Deposit Insurance Act),
26 shall conduct a study of the extent to which credit is being

1 provided to and for small business and farms, as a result
2 of this Act.

3 (b) REPORT.—Before the end of the 5-year period be-
4 ginning on the date of the enactment of this Act, the Sec-
5 retary, in consultation with the Federal banking agencies,
6 shall submit a report to the Congress on the study con-
7 ducted pursuant to subsection (a) and shall include such
8 recommendations as the Secretary determines to be appro-
9 priate for administrative and legislative action.

10 **Subtitle B—Streamlining Super-** 11 **vision of Financial Holding** 12 **Companies**

13 **SEC. 111. STREAMLINING FINANCIAL HOLDING COMPANY** 14 **SUPERVISION.**

15 Section 5(c) of the Bank Holding Company Act of
16 1956 (12 U.S.C. 1844(c)) is amended to read as follows:

17 “(c) REPORTS AND EXAMINATIONS.—

18 “(1) REPORTS.—

19 “(A) IN GENERAL.—The Board from time
20 to time may require any bank holding company
21 and any subsidiary of such company to submit
22 reports under oath to keep the Board informed
23 as to—

24 “(i) its financial condition, systems
25 for monitoring and controlling financial

1 and operating risks, and transactions with
2 depository institution subsidiaries of the
3 holding company; and

4 “(ii) compliance by the company or
5 subsidiary with applicable provisions of
6 this Act.

7 “(B) USE OF EXISTING REPORTS.—

8 “(i) IN GENERAL.—The Board shall,
9 to the fullest extent possible, accept re-
10 ports in fulfillment of the Board’s report-
11 ing requirements under this paragraph
12 that a bank holding company or any sub-
13 sidiary of such company has provided or
14 been required to provide to other Federal
15 and State supervisors or to appropriate
16 self-regulatory organizations.

17 “(ii) AVAILABILITY.—A bank holding
18 company or a subsidiary of such company
19 shall provide to the Board, at the request
20 of the Board, a report referred to in clause
21 (i).

22 “(iii) REQUIRED USE OF PUBLICLY
23 REPORTED INFORMATION.—The Board
24 shall, to the fullest extent possible, accept
25 in fulfillment of any reporting or record-

1 keeping requirements under this Act infor-
2 mation that is otherwise required to be re-
3 ported publicly and externally audited fi-
4 nancial statements.

5 “(iv) REPORTS FILED WITH OTHER
6 AGENCIES.—In the event the Board re-
7 quires a report from a functionally regu-
8 lated nondepository institution subsidiary
9 of a bank holding company of a kind that
10 is not required by another Federal or State
11 regulator or appropriate self-regulatory or-
12 ganization, the Board shall request that
13 the appropriate regulator or self-regulatory
14 organization obtain such report. If the re-
15 port is not made available to the Board,
16 and the report is necessary to assess a ma-
17 terial risk to the bank holding company or
18 any of its subsidiary depository institutions
19 or compliance with this Act, the Board
20 may require such subsidiary to provide
21 such a report to the Board.

22 “(C) DEFINITION.—For purposes of this
23 subsection, the term ‘functionally regulated
24 nondepository institution’ means—

1 “(i) a broker or dealer registered
2 under the Securities Exchange Act of
3 1934;

4 “(ii) an investment adviser registered
5 under the Investment Advisers Act of
6 1940, or with any State, with respect to
7 the investment advisory activities of such
8 investment adviser and activities incidental
9 to such investment advisory activities;

10 “(iii) an insurance company subject to
11 supervision by a State insurance commis-
12 sion, agency, or similar authority; and

13 “(iv) an entity subject to regulation
14 by the Commodity Futures Trading Com-
15 mission, with respect to the commodities
16 activities of such entity and activities inci-
17 dental to such commodities activities.

18 “(2) EXAMINATIONS.—

19 “(A) EXAMINATION AUTHORITY.—

20 “(i) IN GENERAL.—The Board may
21 make examinations of each bank holding
22 company and each subsidiary of a bank
23 holding company.

24 “(ii) FUNCTIONALLY REGULATED
25 NONDEPOSITORY INSTITUTION SUBSIDI-

1 ARIES.—Notwithstanding clause (i), the
2 Board may make examinations of a func-
3 tionally regulated nondepository institution
4 subsidiary of a bank holding company only
5 if—

6 “(I) the Board has reasonable
7 cause to believe that such subsidiary
8 is engaged in activities that pose a
9 material risk to an affiliated depository
10 institution; or

11 “(II) based on reports and other
12 available information, the Board has
13 reasonable cause to believe that a sub-
14 sidiary is not in compliance with this
15 Act or with provisions relating to
16 transactions with an affiliated depository
17 institution and the Board cannot
18 make such determination through ex-
19 amination of the affiliated depository
20 institution or bank holding company.

21 “(B) LIMITATIONS ON EXAMINATION AU-
22 THORITY FOR BANK HOLDING COMPANIES AND
23 SUBSIDIARIES.—Subject to subparagraph
24 (A)(ii), the Board may make examinations
25 under subparagraph (A)(i) of each bank holding

1 company and each subsidiary of such holding
2 company in order to—

3 “(i) inform the Board of the nature of
4 the operations and financial condition of
5 the holding company and such subsidiaries;

6 “(ii) inform the Board of—

7 “(I) the financial and operational
8 risks within the holding company sys-
9 tem that may pose a threat to the
10 safety and soundness of any sub-
11 sidiary depository institution of such
12 holding company; and

13 “(II) the systems for monitoring
14 and controlling such risks; and

15 “(iii) monitor compliance with the
16 provisions of this Act and those governing
17 transactions and relationships between any
18 subsidiary depository institution and its af-
19 filiates.

20 “(C) RESTRICTED FOCUS OF EXAMINA-
21 TIONS.—The Board shall, to the fullest extent
22 possible, limit the focus and scope of any exam-
23 ination of a bank holding company to—

24 “(i) the bank holding company; and

1 “(ii) any subsidiary of the holding
2 company that, because of—

3 “(I) the size, condition, or activi-
4 ties of the subsidiary; or

5 “(II) the nature or size of trans-
6 actions between such subsidiary and
7 any depository institution which is
8 also a subsidiary of such holding com-
9 pany,

10 could have a materially adverse effect on
11 the safety and soundness of any depository
12 institution affiliate of the holding company.

13 “(D) DEFERENCE TO BANK EXAMINA-
14 TIONS.—The Board shall, to the fullest extent
15 possible, use, for the purposes of this para-
16 graph, the reports of examinations of depository
17 institutions made by the appropriate Federal
18 and State depository institution supervisory au-
19 thority.

20 “(E) DEFERENCE TO OTHER EXAMINA-
21 TIONS.—The Board shall, to the fullest extent
22 possible, address the circumstances which might
23 otherwise permit or require an examination by
24 the Board by forgoing an examination and in-

1 stead reviewing the reports of examination
2 made of—

3 “(i) any registered broker or dealer by
4 or on behalf of the Securities and Ex-
5 change Commission;

6 “(ii) any investment adviser registered
7 by or on behalf of either the Securities and
8 Exchange Commission or any State, which-
9 ever is required by law;

10 “(iii) any licensed insurance company
11 by or on behalf of any State regulatory au-
12 thority responsible for the supervision of
13 insurance companies; and

14 “(iv) any other subsidiary that the
15 Board finds to be comprehensively super-
16 vised by a Federal or State authority.

17 “(3) CAPITAL.—

18 “(A) IN GENERAL.—The Board shall not,
19 by regulation, guideline, order or otherwise, pre-
20 scribe or impose any capital or capital adequacy
21 rules, guidelines, standards, or requirements on
22 any subsidiary of a financial holding company
23 that is not a depository institution and—

24 “(i) is in compliance with applicable
25 capital requirements of another Federal

1 regulatory authority (including the Securi-
2 ties and Exchange Commission) or State
3 insurance authority;

4 “(ii) is registered as an investment
5 adviser under the Investment Advisers Act
6 of 1940, or with any State, whichever is
7 required by law; or

8 “(iii) is licensed as an insurance agent
9 with the appropriate State insurance au-
10 thority.

11 “(B) RULE OF CONSTRUCTION.—Subpara-
12 graph (A) shall not be construed as preventing
13 the Board from imposing capital or capital ade-
14 quacy rules, guidelines, standards, or require-
15 ments with respect to—

16 “(i) activities of a registered invest-
17 ment adviser other than investment advi-
18 sory activities or activities incidental to in-
19 vestment advisory activities; or

20 “(ii) activities of a licensed insurance
21 agent other than insurance agency activi-
22 ties or activities incidental to insurance
23 agency activities.

24 “(C) LIMITATIONS ON INDIRECT AC-
25 TION.—In developing, establishing, or assessing

1 holding company capital or capital adequacy
 2 rules, guidelines, standards, or requirements for
 3 purposes of this paragraph, the Board shall not
 4 take into account the activities, operations, or
 5 investments of an affiliated investment company
 6 registered under the Investment Company Act
 7 of 1940, unless the investment company is—

8 “(i) a bank holding company; or

9 “(ii) controlled by a bank holding
 10 company by reason of ownership by the
 11 bank holding company (including through
 12 all of its affiliates) of 25 percent or more
 13 of the shares of the investment company,
 14 and the shares owned by the bank holding
 15 company have a market value equal to
 16 more than \$1,000,000.

17 “(4) TRANSFER OF BOARD AUTHORITY TO AP-
 18 PROPRIATE FEDERAL BANKING AGENCY.—

19 “(A) IN GENERAL.—In the case of any
 20 bank holding company which is not significantly
 21 engaged in nonbanking activities, the Board, in
 22 consultation with the appropriate Federal bank-
 23 ing agency, may designate the appropriate Fed-
 24 eral banking agency of the lead insured deposi-
 25 tory institution subsidiary of such holding com-

pany as the appropriate Federal banking agency for the bank holding company.

“(B) AUTHORITY TRANSFERRED.—An agency designated by the Board under subparagraph (A) shall have the same authority as the Board under this Act to—

“(i) examine and require reports from the bank holding company and any affiliate of such company (other than a depository institution) under section 5;

“(ii) approve or disapprove applications or transactions under section 3;

“(iii) take actions and impose penalties under subsections (e) and (f) of section 5 and section 8; and

“(iv) take actions regarding the holding company, any affiliate of the holding company (other than a depository institution), or any institution-affiliated party of such company or affiliate under the Federal Deposit Insurance Act and any other statute which the Board may designate.

“(C) AGENCY ORDERS.—Section 9 of this Act and section 105 of the Bank Holding Company Act Amendments of 1970 shall apply to

1 orders issued by an agency designated under
2 subparagraph (A) in the same manner such sec-
3 tions apply to orders issued by the Board.

4 “(5) FUNCTIONAL REGULATION OF SECURITIES
5 AND INSURANCE ACTIVITIES.—The Board shall defer
6 to—

7 “(A) the Securities and Exchange Commis-
8 sion with regard to all interpretations of, and
9 the enforcement of, applicable Federal securi-
10 ties laws (and rules, regulations, orders, and
11 other directives issued thereunder) relating to
12 the activities, conduct, and operations of reg-
13 istered brokers, dealers, investment advisers,
14 and investment companies;

15 “(B) the relevant State securities authori-
16 ties with regard to all interpretations of, and
17 the enforcement of, applicable State securities
18 laws (and rules, regulations, orders, and other
19 directives issued thereunder) relating to the ac-
20 tivities, conduct, and operations of brokers,
21 dealers, and investment advisers required to be
22 registered under State law; and

23 “(C) the relevant State insurance authori-
24 ties with regard to all interpretations of, and
25 the enforcement of, applicable State insurance

1 laws (and rules, regulations, orders, and other
2 directives issued thereunder) relating to the ac-
3 tivities, conduct, and operations of insurance
4 companies and insurance agents.”.

5 **SEC. 112. ELIMINATION OF APPLICATION REQUIREMENT**
6 **FOR FINANCIAL HOLDING COMPANIES.**

7 (a) PREVENTION OF DUPLICATIVE FILINGS.—Sec-
8 tion 5(a) of the Bank Holding Company Act of 1956 (12
9 U.S.C. 1844(a)) is amended by adding the following new
10 sentence at the end: “A declaration filed in accordance
11 with section 6(b)(1)(D) shall satisfy the requirements of
12 this subsection with regard to the registration of a bank
13 holding company but not any requirement to file an appli-
14 cation to acquire a bank pursuant to section 3.”.

15 (b) DIVESTITURE PROCEDURES.—Section 5(e)(1) of
16 the Bank Holding Company Act of 1956 (12 U.S.C.
17 1844(e)(1)) is amended—

18 (1) by striking “Financial Institutions Super-
19 visory Act of 1966, order” and inserting “Financial
20 Institutions Supervisory Act of 1966, at the election
21 of the bank holding company—

22 “(A) order”; and

23 (2) by striking “shareholders of the bank hold-
24 ing company. Such distribution” and inserting
25 “shareholders of the bank holding company; or

1 “(B) order the bank holding company, after due
 2 notice and opportunity for hearing, and after con-
 3 sultation with the primary supervisor for the bank,
 4 which shall be the Comptroller of the Currency in
 5 the case of a national bank, and the Federal Deposit
 6 Insurance Corporation and the appropriate State su-
 7 pervisor in the case of an insured nonmember bank,
 8 to terminate (within 120 days or such longer period
 9 as the Board may direct) the ownership or control
 10 of any such bank by such company.

11 The distribution referred to in subparagraph (A)”.

12 **SEC. 113. AUTHORITY OF STATE INSURANCE REGULATOR**
 13 **AND SECURITIES AND EXCHANGE COMMIS-**
 14 **SION.**

15 (a) BANK HOLDING COMPANIES.—Section 5 of the
 16 Bank Holding Company Act of 1956 (12 U.S.C. 1844)
 17 is amended by adding at the end the following new sub-
 18 section:

19 “(g) **AUTHORITY OF STATE INSURANCE REGULATOR**
 20 **AND THE SECURITIES AND EXCHANGE COMMISSION.**—

21 “(1) **IN GENERAL.**—Notwithstanding any other
 22 provision of law, any regulation, order, or other ac-
 23 tion of the Board which requires a bank holding
 24 company to provide funds or other assets to a sub-
 25 sidiary insured depository institution shall not be ef-

1 fective nor enforceable with respect to an entity de-
2 scribed in subparagraph (A) if—

3 “(A) such funds or assets are to be pro-
4 vided by—

5 “(i) a bank holding company that is
6 an insurance company, a broker or dealer
7 registered under the Securities Exchange
8 Act of 1934, an investment company reg-
9 istered under the Investment Company Act
10 of 1940, or an investment adviser reg-
11 istered by or on behalf of either the Securi-
12 ties and Exchange Commission or any
13 State; or

14 “(ii) an affiliate of the depository in-
15 stitution which is an insurance company or
16 a broker or dealer registered under the Se-
17 curities Exchange Act of 1934, an invest-
18 ment company registered under the Invest-
19 ment Company Act of 1940, or an invest-
20 ment adviser registered by or on behalf of
21 either the Securities and Exchange Com-
22 mission or any State; and

23 “(B) the State insurance authority for the
24 insurance company or the Securities and Ex-
25 change Commission for the registered broker,

1 dealer, investment adviser (solely with respect
2 to investment advisory activities or activities in-
3 cidental thereto), or investment company, as
4 the case may be, determines in writing sent to
5 the holding company and the Board that the
6 holding company shall not provide such funds
7 or assets because such action would have a ma-
8 terial adverse effect on the financial condition
9 of the insurance company or the broker, dealer,
10 investment company, or investment adviser, as
11 the case may be.

12 “(2) NOTICE TO STATE INSURANCE AUTHORITY
13 OR SEC REQUIRED.—If the Board requires a bank
14 holding company, or an affiliate of a bank holding
15 company, which is an insurance company or a
16 broker, dealer, investment company, or investment
17 adviser described in paragraph (1)(A) to provide
18 funds or assets to an insured depository institution
19 subsidiary of the holding company pursuant to any
20 regulation, order, or other action of the Board re-
21 ferred to in paragraph (1), the Board shall promptly
22 notify the State insurance authority for the insur-
23 ance company, the Securities and Exchange Com-
24 mission, or State securities regulator, as the case
25 may be, of such requirement.

1 “(3) DIVESTITURE IN LIEU OF OTHER AC-
2 TION.—If the Board receives a notice described in
3 paragraph (1)(B) from a State insurance authority
4 or the Securities and Exchange Commission with re-
5 gard to a bank holding company or affiliate referred
6 to in that paragraph, the Board may order the bank
7 holding company to divest the insured depository in-
8 stitution not later than 180 days after receiving the
9 notice, or such longer period as the Board deter-
10 mines consistent with the safe and sound operation
11 of the insured depository institution.

12 “(4) CONDITIONS BEFORE DIVESTITURE.—Dur-
13 ing the period beginning on the date an order to di-
14 vest is issued by the Board under paragraph (3) to
15 a bank holding company and ending on the date the
16 divestiture is completed, the Board may impose any
17 conditions or restrictions on the holding company’s
18 ownership or operation of the insured depository in-
19 stitution, including restricting or prohibiting trans-
20 actions between the insured depository institution
21 and any affiliate of the institution, as are appro-
22 priate under the circumstances.”.

23 (b) SUBSIDIARIES OF DEPOSITORY INSTITUTIONS.—
24 The Federal Deposit Insurance Act (12 U.S.C. 1811 et

1 seq.) is amended by adding at the end the following new
2 section:

3 **“SEC. 45. AUTHORITY OF STATE INSURANCE REGULATOR**
4 **AND SECURITIES AND EXCHANGE COMMIS-**
5 **SION.**

6 “(a) IN GENERAL.—Notwithstanding any other pro-
7 vision of law, any regulation, order, or other action of the
8 appropriate Federal banking agency which requires a sub-
9 sidiary to provide funds or other assets to an insured de-
10 pository institution shall not be effective nor enforceable
11 with respect to an entity described in paragraph (1) if—

12 “(1) such funds or assets are to be provided by
13 a subsidiary which is an insurance company, a
14 broker or dealer registered under the Securities Ex-
15 change Act of 1934, an investment company reg-
16 istered under the Investment Company Act of 1940,
17 or an investment adviser registered by or on behalf
18 of either the Securities and Exchange Commission
19 or any State; and

20 “(2) the State insurance authority for the in-
21 surance company or the Securities and Exchange
22 Commission for the registered broker or dealer, the
23 investment company, or the investment adviser, as
24 the case may be, determines in writing sent to the
25 insured depository institution and the appropriate

1 Federal banking agency that the subsidiary shall not
2 provide such funds or assets because such action
3 would have a material adverse effect on the financial
4 condition of the insurance company or the broker,
5 dealer, investment company, or investment adviser,
6 as the case may be.

7 “(b) NOTICE TO STATE INSURANCE AUTHORITY OR
8 SEC REQUIRED.—If the appropriate Federal banking
9 agency requires a subsidiary, which is an insurance com-
10 pany, a broker or dealer, an investment company, or an
11 investment adviser (solely with respect to investment advi-
12 sory activities or activities incidental thereto) described in
13 subsection (a)(1) to provide funds or assets to an insured
14 depository institution pursuant to any regulation, order,
15 or other action of the appropriate Federal banking agency
16 referred to in subsection (a), the appropriate Federal
17 banking agency shall promptly notify the State insurance
18 authority for the insurance company, the Securities and
19 Exchange Commission, or State securities regulator, as
20 the case may be, of such requirement.

21 “(c) DIVESTITURE IN LIEU OF OTHER ACTION.—If
22 the appropriate Federal banking agency receives a notice
23 described in subsection (a)(2) from a State insurance au-
24 thority or the Securities and Exchange Commission with
25 regard to a subsidiary referred to in that subsection, the

1 appropriate Federal banking agency may order the in-
2 sured depository institution to divest the subsidiary not
3 later than 180 days after receiving the notice, or such
4 longer period as the appropriate Federal banking agency
5 determines consistent with the safe and sound operation
6 of the insured depository institution.

7 “(d) CONDITIONS BEFORE DIVESTITURE.—During
8 the period beginning on the date an order to divest is
9 issued by the appropriate Federal banking agency under
10 subsection (c) to an insured depository institution and
11 ending on the date the divestiture is complete, the appro-
12 priate Federal banking agency may impose any conditions
13 or restrictions on the insured depository institution’s own-
14 ership of the subsidiary including restricting or prohibiting
15 transactions between the insured depository institution
16 and the subsidiary, as are appropriate under the cir-
17 cumstances.”.

18 **SEC. 114. PRUDENTIAL SAFEGUARDS.**

19 (a) COMPTROLLER OF THE CURRENCY.—

20 (1) IN GENERAL.—The Comptroller of the Cur-
21 rency may, by regulation or order, impose restric-
22 tions or requirements on relationships or trans-
23 actions between a national bank and a subsidiary of
24 the national bank which the Comptroller finds are
25 consistent with the public interest, the purposes of

1 this Act, title LXII of the Revised Statutes of the
2 United States, and other Federal law applicable to
3 national banks, and the standards in paragraph (2).

4 (2) STANDARDS.—The Comptroller of the Cur-
5 rency may exercise authority under paragraph (1) if
6 the Comptroller finds that such action will have any
7 of the following effects:

8 (A) Avoid any significant risk to the safety
9 and soundness of depository institutions or any
10 Federal deposit insurance fund.

11 (B) Enhance the financial stability of
12 banks.

13 (C) Avoid conflicts of interest or other
14 abuses.

15 (D) Enhance the privacy of customers of
16 the national bank or any subsidiary of the
17 bank.

18 (E) Promote the application of national
19 treatment and equality of competitive oppor-
20 tunity between subsidiaries owned or controlled
21 by domestic banks and subsidiaries owned or
22 controlled by foreign banks operating in the
23 United States.

24 (3) REVIEW.—The Comptroller of the Currency
25 shall regularly—

1 (A) review all restrictions or requirements
 2 established pursuant to paragraph (1) to deter-
 3 mine whether there is a continuing need for any
 4 such restriction or requirement to carry out the
 5 purposes of the Act, including any purpose de-
 6 scribed in paragraph (2); and

7 (B) modify or eliminate any restriction or
 8 requirement the Comptroller finds is no longer
 9 required for such purposes.

10 (b) BOARD OF GOVERNORS OF THE FEDERAL RE-
 11 SERVE SYSTEM.—

12 (1) IN GENERAL.—The Board of Governors of
 13 the Federal Reserve System may, by regulation or
 14 order, impose restrictions or requirements on rela-
 15 tionships or transactions—

16 (A) between a depository institution sub-
 17 sidiary of a bank holding company and any af-
 18 filiate of such depository institution (other than
 19 a subsidiary of such institution); or

20 (B) between a State member bank and a
 21 subsidiary of such bank,

22 which the Board finds are consistent with the public
 23 interest, the purposes of this Act, the Bank Holding
 24 Company Act of 1956, the Federal Reserve Act, and
 25 other Federal law applicable to depository institution

1 subsidiaries of bank holding companies or State
2 banks (as the case may be), and the standards in
3 paragraph (2).

4 (2) STANDARDS.—The Board of Governors of
5 the Federal Reserve System may exercise authority
6 under paragraph (1) if the Board finds that such ac-
7 tion will have any of the following effects:

8 (A) Avoid any significant risk to the safety
9 and soundness of depository institutions or any
10 Federal deposit insurance fund.

11 (B) Enhance the financial stability of bank
12 holding companies.

13 (C) Avoid conflicts of interest or other
14 abuses.

15 (D) Enhance the privacy of customers of
16 the State member bank or any subsidiary of the
17 bank.

18 (E) Promote the application of national
19 treatment and equality of competitive oppor-
20 tunity between nonbank affiliates owned or con-
21 trolled by domestic bank holding companies and
22 nonbank affiliates owned or controlled by for-
23 eign banks operating in the United States.

24 (3) REVIEW.—The Board of Governors of the
25 Federal Reserve System shall regularly—

1 (A) review all restrictions or requirements
2 established pursuant to paragraph (1) to deter-
3 mine whether there is a continuing need for any
4 such restriction or requirement to carry out the
5 purposes of the Act, including any purpose de-
6 scribed in paragraph (2); and

7 (B) modify or eliminate any restriction or
8 requirement the Board finds is no longer re-
9 quired for such purposes.

10 (4) FOREIGN BANKS.—

11 (A) IN GENERAL.—The Board may, by
12 regulation or order, impose restrictions or re-
13 quirements on relationships or transactions be-
14 tween a branch, agency, or commercial lending
15 company of a foreign bank in the United States
16 and any affiliate in the United States of such
17 foreign bank that the Board finds are con-
18 sistent with the public interest, the purposes of
19 this Act, the Bank Holding Company Act of
20 1956, the Federal Reserve Act, and other Fed-
21 eral law applicable to foreign banks and their
22 affiliates in the United States, and the stand-
23 ards in paragraphs (2) and (3).

24 (B) EVASION.—In the event that the
25 Board determines that there may be cir-

1 cumstances that would result in an evasion of
2 this paragraph, the Board may also impose re-
3 strictions or requirements on relationships or
4 transactions between a foreign bank outside the
5 United States and any affiliate in the United
6 States of such foreign bank that are consistent
7 with national treatment and equality of com-
8 petitive opportunity.

9 (c) FEDERAL DEPOSIT INSURANCE CORPORATION.—

10 (1) IN GENERAL.—The Federal Deposit Insur-
11 ance Corporation may, by regulation or order, im-
12 pose restrictions or requirements on relationships or
13 transactions between a State nonmember bank (as
14 defined in section 3 of the Federal Deposit Insur-
15 ance Act) and a subsidiary of the State nonmember
16 bank which the Corporation finds are consistent with
17 the public interest, the purposes of this Act, the
18 Federal Deposit Insurance Act, or other Federal law
19 applicable to State nonmember banks and the stand-
20 ards in paragraph (2).

21 (2) STANDARDS.—The Federal Deposit Insur-
22 ance Corporation may exercise authority under para-
23 graph (1) if the Corporation finds that such action
24 will have any of the following effects:

1 (A) Avoid any significant risk to the safety
2 and soundness of depository institutions or any
3 Federal deposit insurance fund.

4 (B) Enhance the financial stability of
5 banks.

6 (C) Avoid conflicts of interest or other
7 abuses.

8 (D) Enhance the privacy of customers of
9 the State nonmember bank or any subsidiary of
10 the bank.

11 (E) Promote the application of national
12 treatment and equality of competitive oppor-
13 tunity between subsidiaries owned or controlled
14 by domestic banks and subsidiaries owned or
15 controlled by foreign banks operating in the
16 United States.

17 (3) REVIEW.—The Federal Deposit Insurance
18 Corporation shall regularly—

19 (A) review all restrictions or requirements
20 established pursuant to paragraph (1) to deter-
21 mine whether there is a continuing need for any
22 such restriction or requirement to carry out the
23 purposes of the Act, including any purpose de-
24 scribed in paragraph (2); and

1 (B) modify or eliminate any restriction or
2 requirement the Corporation finds is no longer
3 required for such purposes.

4 **SEC. 115. EXAMINATION OF INVESTMENT COMPANIES.**

5 (a) EXCLUSIVE COMMISSION AUTHORITY.—

6 (1) IN GENERAL.—Except as provided in para-
7 graph (3), the Commission shall be the sole Federal
8 agency with authority to inspect and examine any
9 registered investment company that is not a bank
10 holding company or a savings and loan holding com-
11 pany.

12 (2) PROHIBITION ON BANKING AGENCIES.—Ex-
13 cept as provided in paragraph (3), a Federal bank-
14 ing agency may not inspect or examine any reg-
15 istered investment company that is not a bank hold-
16 ing company or a savings and loan holding company.

17 (3) CERTAIN EXAMINATIONS AUTHORIZED.—
18 Nothing in this subsection prevents the Federal De-
19 posit Insurance Corporation, if the Corporation finds
20 it necessary to determine the condition of an insured
21 depository institution for insurance purposes, from
22 examining an affiliate of any insured depository in-
23 stitution, pursuant to its authority under section
24 10(b)(4) of the Federal Deposit Insurance Act, as
25 may be necessary to disclose fully the relationship

1 between the depository institution and the affiliate,
2 and the effect of such relationship on the depository
3 institution.

4 (b) EXAMINATION RESULTS AND OTHER INFORMA-
5 TION.—The Commission shall provide to any Federal
6 banking agency, upon request, the results of any examina-
7 tion, reports, records, or other information with respect
8 to any registered investment company to the extent nec-
9 essary for the agency to carry out its statutory responsibil-
10 ities.

11 (c) DEFINITIONS.—For purposes of this section, the
12 following definitions shall apply:

13 (1) BANK HOLDING COMPANY.—The term
14 “bank holding company” has the same meaning as
15 in section 2 of the Bank Holding Company Act of
16 1956.

17 (2) COMMISSION.—The term “Commission”
18 means the Securities and Exchange Commission.

19 (3) FEDERAL BANKING AGENCY.—The term
20 “Federal banking agency” has the same meaning as
21 in section 3(z) of the Federal Deposit Insurance Act.

22 (4) REGISTERED INVESTMENT COMPANY.—The
23 term “registered investment company” means an in-
24 vestment company which is registered with the Com-
25 mission under the Investment Company Act of 1940.

1 (5) SAVINGS AND LOAN HOLDING COMPANY.—

2 The term “savings and loan holding company” has
3 the same meaning as in section 10(a)(1)(D) of the
4 Home Owners’ Loan Act.

5 **SEC. 116. LIMITATION ON RULEMAKING, PRUDENTIAL, SU-**
6 **PERVISORY, AND ENFORCEMENT AUTHORITY**
7 **OF THE BOARD.**

8 The Bank Holding Company Act of 1956 (12 U.S.C.
9 1841 et seq.) is amended by inserting after section 10 the
10 following new section:

11 **“SEC. 10A. LIMITATION ON RULEMAKING, PRUDENTIAL, SU-**
12 **PERVISORY, AND ENFORCEMENT AUTHORITY**
13 **OF THE BOARD.**

14 “(a) LIMITATION ON DIRECT ACTION.—

15 “(1) IN GENERAL.—The Board may not pre-
16 scribe regulations, issue or seek entry of orders, im-
17 pose restraints, restrictions, guidelines, require-
18 ments, safeguards, or standards, or otherwise take
19 any action under or pursuant to any provision of
20 this Act or section 8 of the Federal Deposit Insur-
21 ance Act against or with respect to a regulated sub-
22 sidiary of a bank holding company unless the action
23 is necessary to prevent or redress an unsafe or un-
24 sound practice or breach of fiduciary duty by such
25 subsidiary that poses a material risk to—

1 “(A) the financial safety, soundness, or
2 stability of an affiliated depository institution;
3 or

4 “(B) the domestic or international pay-
5 ment system.

6 “(2) CRITERIA FOR BOARD ACTION.—The
7 Board shall not take action otherwise permitted
8 under paragraph (1) unless the Board finds that it
9 is not reasonably possible to effectively protect
10 against the material risk at issue through action di-
11 rected at or against the affiliated depository institu-
12 tion or against depository institutions generally.

13 “(b) LIMITATION ON INDIRECT ACTION.—The Board
14 may not prescribe regulations, issue or seek entry of or-
15 ders, impose restraints, restrictions, guidelines, require-
16 ments, safeguards, or standards, or otherwise take any ac-
17 tion under or pursuant to any provision of this Act or sec-
18 tion 8 of the Federal Deposit Insurance Act against or
19 with respect to a financial holding company or a wholesale
20 financial holding company where the purpose or effect of
21 doing so would be to take action indirectly against or with
22 respect to a regulated subsidiary that may not be taken
23 directly against or with respect to such subsidiary in ac-
24 cordance with subsection (a).

1 “(c) ACTIONS SPECIFICALLY AUTHORIZED.—Not-
2 withstanding subsection (a), the Board may take action
3 under this Act or section 8 of the Federal Deposit Insur-
4 ance Act to enforce compliance by a regulated subsidiary
5 with Federal law that the Board has specific jurisdiction
6 to enforce against such subsidiary.

7 “(d) REGULATED SUBSIDIARY DEFINED.—For pur-
8 poses of this section, the term ‘regulated subsidiary’
9 means any company that is not a bank holding company
10 and is—

11 “(1) a broker or dealer registered under the Se-
12 curities Exchange Act of 1934;

13 “(2) an investment adviser registered by or on
14 behalf of either the Securities and Exchange Com-
15 mission or any State, whichever is required by law,
16 with respect to the investment advisory activities of
17 such investment adviser and activities incidental to
18 such investment advisory activities;

19 “(3) an investment company registered under
20 the Investment Company Act of 1940;

21 “(4) an insurance company or an insurance
22 agency, with respect to the insurance activities and
23 activities incidental to such insurance activities, sub-
24 ject to supervision by a State insurance commission,
25 agency, or similar authority; or

1 “(5) an entity subject to regulation by the Com-
2 modity Futures Trading Commission, with respect
3 to the commodities activities of such entity and ac-
4 tivities incidental to such commodities activities.”.

5 **SEC. 117. EQUIVALENT REGULATION AND SUPERVISION.**

6 (a) IN GENERAL.—Notwithstanding any other provi-
7 sion of law, the provisions of—

8 (1) section 5(c) of the Bank Holding Company
9 Act of 1956 (as amended by this Act) that limit the
10 authority of the Board of Governors of the Federal
11 Reserve System to require reports from, to make ex-
12 aminations of, or to impose capital requirements on
13 bank holding companies and their nonbank subsidi-
14 aries or that require deference to other regulators;
15 and

16 (2) section 10A of the Bank Holding Company
17 Act of 1956 (as added by this Act) that limit what-
18 ever authority the Board might otherwise have to
19 take direct or indirect action with respect to bank
20 holding companies and their nonbank subsidiaries,
21 shall also limit whatever authority that a Federal banking
22 agency (as defined in section 3(z) of the Federal Deposit
23 Insurance Act) might otherwise have under any statute
24 to require reports, make examinations, impose capital re-
25 quirements or take any other direct or indirect action with

1 respect to bank holding companies and their nonbank sub-
2 sidiaries (including nonbank subsidiaries of depository in-
3 stitutions), subject to the same standards and require-
4 ments as are applicable to the Board under such provi-
5 sions.

6 (b) CERTAIN EXAMINATIONS AUTHORIZED.—No pro-
7 vision of this section shall be construed as preventing the
8 Federal Deposit Insurance Corporation, if the Corporation
9 finds it necessary to determine the condition of an insured
10 depository institution for insurance purposes, from exam-
11 ining an affiliate of any insured depository institution,
12 pursuant to its authority under section 10(b)(4) of the
13 Federal Deposit Insurance Act, as may be necessary to
14 disclose fully the relationship between the depository insti-
15 tution and the affiliate, and the effect of such relationship
16 on the depository institution.

17 **SEC. 118. PROHIBITION ON FDIC ASSISTANCE TO AFFILI-**
18 **ATES AND SUBSIDIARIES.**

19 Section 11(a)(4)(B) of the Federal Deposit Insurance
20 Act (12 U.S.C. 1821(a)(4)(B)) is amended by striking “to
21 benefit any shareholder of” and inserting “to benefit any
22 shareholder, affiliate (other than an insured depository in-
23 stitution that receives assistance in accordance with the
24 provisions of this Act), or subsidiary of”.

1 **SEC. 119. REPEAL OF SAVINGS BANK PROVISIONS IN THE**
 2 **BANK HOLDING COMPANY ACT OF 1956.**

3 Section 3(f) of the Bank Holding Company Act of
 4 1956 (12 U.S.C. 1842(f)) is amended to read as follows:

5 “(f) [Repealed].”.

6 **SEC. 120. TECHNICAL AMENDMENT.**

7 Section 2(o)(1)(A) of the Bank Holding Company
 8 Act of 1956 (12 U.S.C. 1841(o)(1)(A)) is amended by
 9 striking “section 38(b)” and inserting “section 38”.

10 **Subtitle C—Subsidiaries of**
 11 **National Banks**

12 **SEC. 121. PERMISSIBLE ACTIVITIES FOR SUBSIDIARIES OF**
 13 **NATIONAL BANKS.**

14 (a) FINANCIAL SUBSIDIARIES OF NATIONAL
 15 BANKS.—Chapter 1 of title LXII of the Revised Statutes
 16 of United States (12 U.S.C. 21 et seq.) is amended—

17 (1) by redesignating section 5136A as section
 18 5136C; and

19 (2) by inserting after section 5136 (12 U.S.C.
 20 24) the following new section:

21 **“SEC. 5136A. SUBSIDIARIES OF NATIONAL BANKS.**

22 **“(a) SUBSIDIARIES OF NATIONAL BANKS AUTHOR-**
 23 **IZED TO ENGAGE IN FINANCIAL ACTIVITIES.—**

24 **“(1) EXCLUSIVE AUTHORITY.—**No provision of
 25 section 5136 or any other provision of this title
 26 LXII of the Revised Statutes of the United States

1 shall be construed as authorizing a subsidiary of a
2 national bank to engage in, or own any share of or
3 any other interest in any company engaged in, any
4 activity that—

5 “(A) is not permissible for a national bank
6 to engage in directly; or

7 “(B) is conducted under terms or condi-
8 tions other than those that would govern the
9 conduct of such activity by a national bank,

10 unless a national bank is specifically authorized by
11 the express terms of a Federal statute and not by
12 implication or interpretation to acquire shares of or
13 an interest in, or to control, such subsidiary, such as
14 by paragraph (2) of this subsection and section 25A
15 of the Federal Reserve Act.

16 “(2) SPECIFIC AUTHORIZATION TO CONDUCT
17 ACTIVITIES WHICH ARE FINANCIAL IN NATURE.—

18 Subject to paragraphs (3) and (4), a national bank
19 may control a financial subsidiary, or hold an inter-
20 est in a financial subsidiary, that is controlled by in-
21 sured depository institutions or subsidiaries thereof.

22 “(3) ELIGIBILITY REQUIREMENTS.—A national
23 bank may control or hold an interest in a company
24 pursuant to paragraph (2) only if—

1 “(A) the national bank and all depository
2 institution affiliates of the national bank are
3 well capitalized;

4 “(B) the national bank and all depository
5 institution affiliates of the national bank are
6 well managed;

7 “(C) the national bank and all depository
8 institution affiliates of such national bank have
9 achieved a rating of ‘satisfactory record of
10 meeting community credit needs’, or better, at
11 the most recent examination of each such bank
12 or institution; and

13 “(D) the bank has received the approval of
14 the Comptroller of the Currency.

15 “(4) ACTIVITY LIMITATIONS.—In addition to
16 any other limitation imposed on the activity of sub-
17 sidiaries of national banks, a subsidiary of a na-
18 tional bank may not, pursuant to paragraph (2)—

19 “(A) engage as principal in insuring, guar-
20 anteeing, or indemnifying against loss, harm,
21 damage, illness, disability, or death (other than
22 in connection with credit-related insurance) or
23 in providing or issuing annuities;

24 “(B) engage in real estate investment or
25 development activities; or

1 “(C) engage in any activity permissible for
2 a financial holding company under paragraph
3 (3)(I) of section 6(c) of the Bank Holding Com-
4 pany Act of 1956 (relating to insurance com-
5 pany investments).

6 “(5) SIZE FACTOR WITH REGARD TO FREE-
7 STANDING NATIONAL BANKS.—Notwithstanding
8 paragraph (2), a national bank which has total as-
9 sets of \$10,000,000,000 or more may not control a
10 subsidiary engaged in financial activities pursuant to
11 such paragraph unless such national bank is a sub-
12 sidiary of a bank holding company.

13 “(6) LIMITED EXCLUSIONS FROM COMMUNITY
14 NEEDS REQUIREMENTS FOR NEWLY AFFILIATED DE-
15 POSITORY INSTITUTIONS.—Any depository institu-
16 tion which becomes an affiliate of a national bank
17 during the 12-month period preceding the date of an
18 approval by the Comptroller of the Currency under
19 paragraph (3)(D) for such bank, and any depository
20 institution which becomes an affiliate of the national
21 bank after such date, may be excluded for purposes
22 of paragraph (3)(C) during the 12-month period be-
23 ginning on the date of such affiliation if—

24 “(A) the national bank or such depository
25 institution has submitted an affirmative plan to

1 the appropriate Federal banking agency to take
2 such action as may be necessary in order for
3 such institution to achieve a rating of ‘satisfac-
4 tory record of meeting community credit needs’,
5 or better, at the next examination of the insti-
6 tution; and

7 “(B) the plan has been accepted by such
8 agency.

9 “(7) DEFINITIONS.—For purposes of this sec-
10 tion, the following definitions shall apply:

11 “(A) COMPANY; CONTROL; AFFILIATE;
12 SUBSIDIARY.—The terms ‘company’, ‘control’,
13 ‘affiliate’, and ‘subsidiary’ have the same mean-
14 ings as in section 2 of the Bank Holding Com-
15 pany Act of 1956.

16 “(B) FINANCIAL SUBSIDIARY.—The term
17 ‘financial subsidiary’ means a company which is
18 a subsidiary of an insured bank and is engaged
19 in financial activities that have been determined
20 to be financial in nature or incidental to such
21 financial activities in accordance with sub-
22 section (b) or permitted in accordance with sub-
23 section (b)(4), other than activities that are
24 permissible for a national bank to engage in di-
25 rectly or that are authorized under the Bank

1 Service Company Act, section 25 or 25A of the
2 Federal Reserve Act, or any other Federal statute (other than this section) that specifically
3 authorizes the conduct of such activities by its
4 express terms and not by implication or interpretation.
5
6

7 “(C) WELL CAPITALIZED.—The term ‘well
8 capitalized’ has the same meaning as in section
9 38 of the Federal Deposit Insurance Act and,
10 for purposes of this section, the Comptroller
11 shall have exclusive jurisdiction to determine
12 whether a national bank is well capitalized.

13 “(D) WELL MANAGED.—The term ‘well
14 managed’ means—

15 “(i) in the case of a depository institution that has been examined, unless otherwise
16 determined in writing by the appropriate Federal banking agency—

17 “(I) the achievement of a composite rating of 1 or 2 under the Uniform
18 Financial Institutions Rating System (or an equivalent rating under
19 an equivalent rating system) in connection with the most recent examina-
20
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1 tion or subsequent review of the de-
2 pository institution; and

3 “(II) at least a rating of 2 for
4 management, if that rating is given;
5 or

6 “(ii) in the case of any depository in-
7 stitution that has not been examined, the
8 existence and use of managerial resources
9 that the appropriate Federal banking agen-
10 cy determines are satisfactory.

11 “(E) INCORPORATED DEFINITIONS.—The
12 terms ‘appropriate Federal banking agency’ and
13 ‘depository institution’ have the same meanings
14 as in section 3 of the Federal Deposit Insur-
15 ance Act.

16 “(b) ACTIVITIES THAT ARE FINANCIAL IN NA-
17 TURE.—

18 “(1) FINANCIAL ACTIVITIES.—

19 “(A) IN GENERAL.—For purposes of sub-
20 section (a)(7)(B), an activity shall be consid-
21 ered to have been determined to be financial in
22 nature or incidental to such financial activities
23 only if—

24 “(i) such activity is permitted for a fi-
25 nancial holding company pursuant to sec-

tion 6(c)(3) of the Bank Holding Company Act of 1956 (to the extent such activity is not otherwise prohibited under this section or any other provision of law for a subsidiary of a national bank engaged in activities pursuant to subsection (a)(2)); or

“(ii) the Secretary of the Treasury determines the activity to be financial in nature or incidental to such financial activities in accordance with subparagraph (B) or paragraph (3).

“(B) COORDINATION BETWEEN THE BOARD AND THE SECRETARY OF THE TREASURY.—

“(i) PROPOSALS RAISED BEFORE THE SECRETARY OF THE TREASURY.—

“(I) CONSULTATION.—The Secretary of the Treasury shall notify the Board of, and consult with the Board concerning, any request, proposal, or application under this subsection, including any regulation or order proposed under paragraph (3), for a determination of whether an activity is

1 financial in nature or incidental to
2 such a financial activity.

3 “(II) BOARD VIEW.—The Sec-
4 retary of the Treasury shall not deter-
5 mine that any activity is financial in
6 nature or incidental to a financial ac-
7 tivity under this subsection if the
8 Board notifies the Secretary in writ-
9 ing, not later than 30 days after the
10 date of receipt of the notice described
11 in subclause (I) (or such longer period
12 as the Secretary determines to be ap-
13 propriate in light of the cir-
14 cumstances) that the Board believes
15 that the activity is not financial in na-
16 ture or incidental to a financial activ-
17 ity.

18 “(ii) PROPOSALS RAISED BY THE
19 BOARD.—

20 “(I) BOARD RECOMMENDA-
21 TION.—The Board may, at any time,
22 recommend in writing that the Sec-
23 retary of the Treasury find an activity
24 to be financial in nature or incidental
25 to a financial activity (other than an

1 activity which the Board has sole au-
2 thority to regulate under subpara-
3 graph (C)).

4 “(II) TIME PERIOD FOR SECRE-
5 TARIAL ACTION.—Not later than 30
6 days after the date of receipt of a
7 written recommendation from the
8 Board under subclause (I) (or such
9 longer period as the Secretary of the
10 Treasury and the Board determine to
11 be appropriate in light of the cir-
12 cumstances), the Secretary shall de-
13 termine whether to initiate a public
14 rulemaking proposing that the subject
15 recommended activity be found to be
16 financial in nature or incidental to a
17 financial activity under this sub-
18 section, and shall notify the Board in
19 writing of the determination of the
20 Secretary and, in the event that the
21 Secretary determines not to seek pub-
22 lic comment on the proposal, the rea-
23 sons for that determination.

24 “(C) AUTHORITY OVER MERCHANT BANK-
25 ING.—The Board shall have sole authority to

1 prescribe regulations and issue interpretations
2 to implement this paragraph with respect to ac-
3 tivities described in section 6(c)(3)(H) of the
4 Bank Holding Company Act of 1956.

5 “(2) FACTORS TO BE CONSIDERED.—In deter-
6 mining whether an activity is financial in nature or
7 incidental to financial activities, the Secretary shall
8 take into account—

9 “(A) the purposes of this Act and the Fi-
10 nancial Services Act of 1999;

11 “(B) changes or reasonably expected
12 changes in the marketplace in which banks
13 compete;

14 “(C) changes or reasonably expected
15 changes in the technology for delivering finan-
16 cial services; and

17 “(D) whether such activity is necessary or
18 appropriate to allow a bank and the subsidiaries
19 of a bank to—

20 “(i) compete effectively with any com-
21 pany seeking to provide financial services
22 in the United States;

23 “(ii) use any available or emerging
24 technological means, including any applica-
25 tion necessary to protect the security or ef-

1 efficacy of systems for the transmission of
2 data or financial transactions, in providing
3 financial services; and

4 “(iii) offer customers any available or
5 emerging technological means for using fi-
6 nancial services.

7 “(3) AUTHORIZATION OF NEW FINANCIAL AC-
8 TIVITIES.—The Secretary of the Treasury shall, by
9 regulation or order and in accordance with para-
10 graph (1)(B), define, consistent with the purposes of
11 this Act, the following activities as, and the extent
12 to which such activities are, financial in nature or
13 incidental to activities which are financial in nature:

14 “(A) Lending, exchanging, transferring, in-
15 vesting for others, or safeguarding financial as-
16 sets other than money or securities.

17 “(B) Providing any device or other instru-
18 mentality for transferring money or other finan-
19 cial assets.

20 “(C) Arranging, effecting, or facilitating fi-
21 nancial transactions for the account of third
22 parties.

23 “(4) DEVELOPING ACTIVITIES.—Subject to sub-
24 section (a)(2), a financial subsidiary of a national
25 bank may engage directly or indirectly, or acquire

1 shares of any company engaged, in any activity that
2 the Secretary has not determined to be financial in
3 nature or incidental to financial activities under this
4 subsection if—

5 “(A) the subsidiary reasonably concludes
6 that the activity is financial in nature or inci-
7 dental to financial activities;

8 “(B) the gross revenues from all activities
9 conducted under this paragraph represent less
10 than 5 percent of the consolidated gross reve-
11 nues of the national bank;

12 “(C) the aggregate total assets of all com-
13 panies the shares of which are held under this
14 paragraph do not exceed 5 percent of the na-
15 tional bank’s consolidated total assets;

16 “(D) the total capital invested in activities
17 conducted under this paragraph represents less
18 than 5 percent of the consolidated total capital
19 of the national bank;

20 “(E) neither the Secretary of the Treasury
21 nor the Board has determined that the activity
22 is not financial in nature or incidental to finan-
23 cial activities under this subsection; and

24 “(F) the national bank provides written
25 notice to the Secretary of the Treasury describ-

1 ing the activity commenced by the subsidiary or
2 conducted by the company acquired no later
3 than 10 business days after commencing the ac-
4 tivity or consummating the acquisition.

5 “(c) PROVISIONS APPLICABLE TO NATIONAL BANKS
6 THAT FAIL TO MEET REQUIREMENTS.—

7 “(1) IN GENERAL.—If a national bank or de-
8 pository institution affiliate is not in compliance
9 with the requirements of subparagraph (A), (B), or
10 (C) of subsection (a)(3), the appropriate Federal
11 banking agency shall notify the Comptroller of the
12 Currency, who shall give notice of such finding to
13 the national bank.

14 “(2) AGREEMENT TO CORRECT CONDITIONS RE-
15 QUIRED.—Not later than 45 days after receipt by a
16 national bank of a notice given under paragraph (1)
17 (or such additional period as the Comptroller of the
18 Currency may permit), the national bank and any
19 relevant affiliated depository institution shall execute
20 an agreement acceptable to the Comptroller of the
21 Currency and the other appropriate Federal banking
22 agencies, if any, to comply with the requirements ap-
23 plicable under subsection (a)(3).

24 “(3) COMPTROLLER OF THE CURRENCY MAY
25 IMPOSE LIMITATIONS.—Until the conditions de-

1 scribed in a notice to a national bank under para-
2 graph (1) are corrected—

3 “(A) the Comptroller of the Currency may
4 impose such limitations on the conduct or ac-
5 tivities of the national bank or any subsidiary
6 of the bank as the Comptroller of the Currency
7 determines to be appropriate under the cir-
8 cumstances; and

9 “(B) the appropriate Federal banking
10 agency may impose such limitations on the con-
11 duct or activities of an affiliated depository in-
12 stitution or any subsidiary of the depository in-
13 stitution as such agency determines to be ap-
14 propriate under the circumstances.

15 “(4) FAILURE TO CORRECT.—If, after receiving
16 a notice under paragraph (1), a national bank and
17 other affiliated depository institutions do not—

18 “(A) execute and implement an agreement
19 in accordance with paragraph (2);

20 “(B) comply with any limitations imposed
21 under paragraph (3);

22 “(C) in the case of a notice of failure to
23 comply with subsection (a)(3)(A), restore the
24 national bank or any depository institution af-
25 filiate of the bank to well capitalized status be-

1 fore the end of the 180-day period beginning on
2 the date such notice is received by the national
3 bank (or such other period permitted by the
4 Comptroller of the Currency); or

5 “(D) in the case of a notice of failure to
6 comply with subparagraph (B) or (C) of sub-
7 section (a)(3), restore compliance with any such
8 subparagraph on or before the date on which
9 the next examination of the depository institu-
10 tion subsidiary is completed or by the end of
11 such other period as the Comptroller of the
12 Currency determines to be appropriate,

13 the Comptroller of the Currency may require such
14 national bank, under such terms and conditions as
15 may be imposed by the Comptroller of the Currency
16 and subject to such extension of time as may be
17 granted in the Comptroller of the Currency’s discre-
18 tion, to divest control of any subsidiary engaged in
19 activities pursuant to subsection (a)(2) or, at the
20 election of the national bank, instead to cease to en-
21 gage in any activity conducted by a subsidiary of the
22 national bank pursuant to subsection (a)(2).

23 “(5) CONSULTATION.—In taking any action
24 under this subsection, the Comptroller of the Cur-

1 rency shall consult with all relevant Federal and
2 State regulatory agencies.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 for chapter 1 of title LXII of the Revised Statutes of the
5 United States is amended—

6 (1) by redesignating the item relating to section
7 5136A as section 5136C; and

8 (2) by inserting after the item relating to sec-
9 tion 5136 the following new item:

“5136A. Subsidiaries of national banks.”.

10 **SEC. 122. SAFETY AND SOUNDNESS FIREWALLS BETWEEN**
11 **BANKS AND THEIR FINANCIAL SUBSIDIARIES.**

12 (a) PURPOSES.—The purposes of this section are—

13 (1) to protect the safety and soundness of any
14 insured bank that has a financial subsidiary;

15 (2) to apply to any transaction between the
16 bank and the financial subsidiary (including a loan,
17 extension of credit, guarantee, or purchase of as-
18 sets), other than an equity investment, the same re-
19 strictions and requirements as would apply if the fi-
20 nancial subsidiary were a subsidiary of a bank hold-
21 ing company having control of the bank; and

22 (3) to apply to any equity investment of the
23 bank in the financial subsidiary restrictions and re-
24 quirements equivalent to those that would apply if—

1 (A) the bank paid a dividend in the same
 2 dollar amount to a bank holding company hav-
 3 ing control of the bank; and

4 (B) the bank holding company used the
 5 proceeds of the dividend to make an equity in-
 6 vestment in a subsidiary that was engaged in
 7 the same activities as the financial subsidiary of
 8 the bank.

9 (b) SAFETY AND SOUNDNESS FIREWALLS APPLICA-
 10 BLE TO SUBSIDIARIES OF BANKS.—The Federal Deposit
 11 Insurance Act (12 U.S.C. 1811 et seq.) is amended by
 12 inserting after section 45 (as added by section 113(b) of
 13 this title) the following new section:

14 **“SEC. 46. SAFETY AND SOUNDNESS FIREWALLS APPLICA-**
 15 **BLE TO SUBSIDIARIES OF BANKS.**

16 “(a) LIMITING THE EQUITY INVESTMENT OF A BANK
 17 IN A SUBSIDIARY.—

18 “(1) CAPITAL DEDUCTION.—In determining
 19 whether an insured bank complies with applicable
 20 regulatory capital standards—

21 “(A) the appropriate Federal banking
 22 agency shall deduct from the assets and tan-
 23 gible equity of the bank the aggregate amount
 24 of the outstanding equity investments of the
 25 bank in financial subsidiaries of the bank; and

1 “(B) the assets and liabilities of such fi-
2 nancial subsidiaries shall not be consolidated
3 with those of the bank.

4 “(2) INVESTMENT LIMITATION.—An insured
5 bank shall not, without the prior approval of the ap-
6 propriate Federal banking agency, make any equity
7 investment in a financial subsidiary of the bank if
8 that investment would, when made, exceed the
9 amount that the bank could pay as a dividend with-
10 out obtaining prior regulatory approval.

11 “(3) TREATMENT OF RETAINED EARNINGS.—
12 The amount of any net earnings retained by a finan-
13 cial subsidiary of an insured depository institution
14 shall be treated as an outstanding equity investment
15 of the bank in the subsidiary for purposes of para-
16 graph (1).

17 “(b) OPERATIONAL AND FINANCIAL SAFEGUARDS
18 FOR THE BANK.—An insured bank that has a financial
19 subsidiary shall maintain procedures for identifying and
20 managing any financial and operational risks posed by the
21 financial subsidiary.

22 “(c) MAINTENANCE OF SEPARATE CORPORATE
23 IDENTITY AND SEPARATE LEGAL STATUS.—

24 “(1) IN GENERAL.—Each insured bank shall
25 ensure that the bank maintains and complies with

1 reasonable policies and procedures to preserve the
2 separate corporate identity and legal status of the
3 bank and any financial subsidiary or affiliate of the
4 bank.

5 “(2) EXAMINATIONS.—The appropriate Federal
6 banking agency, as part of each examination, shall
7 review whether an insured bank is observing the sep-
8 arate corporate identity and separate legal status of
9 any subsidiaries and affiliates of the bank.

10 “(d) FINANCIAL SUBSIDIARY DEFINED.—For pur-
11 poses of this section, the term ‘financial subsidiary’ has
12 the meaning given to such term in section 5136A(a)(7)(B)
13 of the Revised Statutes of the United States.

14 “(e) REGULATIONS.—The appropriate Federal bank-
15 ing agencies shall jointly prescribe regulations imple-
16 menting this section.”.

17 (c) TRANSACTIONS BETWEEN FINANCIAL SUBSIDI-
18 ARIES AND OTHER AFFILIATES.—Section 23A of the Fed-
19 eral Reserve Act (12 U.S.C. 371c) is amended—

20 (1) by redesignating subsection (e) as sub-
21 section (f); and

22 (2) by inserting after subsection (d), the fol-
23 lowing new subsection:

24 “(e) RULES RELATING TO BANKS WITH FINANCIAL
25 SUBSIDIARIES.—

1 “(1) FINANCIAL SUBSIDIARY DEFINED.—For
2 purposes of this section and section 23B, the term
3 ‘financial subsidiary’ means a company which is a
4 subsidiary of a bank and is engaged in activities that
5 are financial in nature or incidental to such financial
6 activities pursuant to subsection (a)(2) or (b)(4) of
7 section 5136A of the Revised Statutes of the United
8 States.

9 “(2) APPLICATION TO TRANSACTIONS BETWEEN
10 A FINANCIAL SUBSIDIARY OF A BANK AND THE
11 BANK.—For purposes of applying this section and
12 section 23B to a transaction between a financial
13 subsidiary of a bank and the bank (or between such
14 financial subsidiary and any other subsidiary of the
15 bank which is not a financial subsidiary) and not-
16 withstanding subsection (b)(2) and section
17 23B(d)(1), the financial subsidiary of the bank—

18 “(A) shall be an affiliate of the bank and
19 any other subsidiary of the bank which is not
20 a financial subsidiary; and

21 “(B) shall not be treated as a subsidiary of
22 the bank.

23 “(3) APPLICATION TO TRANSACTIONS BETWEEN
24 FINANCIAL SUBSIDIARY AND NONBANK AFFILI-
25 ATES.—

1 “(A) IN GENERAL.—A transaction between
2 a financial subsidiary and an affiliate of the fi-
3 nancial subsidiary shall not be deemed to be a
4 transaction between a subsidiary of a national
5 bank and an affiliate of the bank for purposes
6 of section 23A or section 23B of the Federal
7 Reserve Act.

8 “(B) CERTAIN AFFILIATES EXCLUDED.—
9 For purposes of subparagraph (A) and notwith-
10 standing paragraph (4), the term ‘affiliate’
11 shall not include a bank, or a subsidiary of a
12 bank, which is engaged exclusively in activities
13 permissible for a national bank to engage in di-
14 rectly or which are authorized by any Federal
15 law other than section 5136A of the Revised
16 Statutes of the United States.

17 “(4) EQUITY INVESTMENTS EXCLUDED SUB-
18 JECT TO THE APPROVAL OF THE BANKING AGEN-
19 CY.—Subsection (a)(1) shall not apply so as to limit
20 the equity investment of a bank in a financial sub-
21 sidiary of such bank, except that any investment
22 that exceeds the amount of a dividend that the bank
23 could pay at the time of the investment without ob-
24 taining prior approval of the appropriate Federal
25 banking agency and is in excess of the limitation

1 which would apply under subsection (a)(1), but for
 2 this paragraph, may be made only with the approval
 3 of the appropriate Federal banking agency (as de-
 4 fined in section 3(q) of the Federal Deposit Insur-
 5 ance Act) with respect to such bank.”.

6 (d) ANTITYING.—Section 106(a) of the Bank Hold-
 7 ing Company Act Amendments of 1970 is amended by
 8 adding at the end the following new sentence: “For pur-
 9 poses of this section, a subsidiary of a national bank which
 10 engages in activities pursuant to subsection (a)(2) or
 11 (b)(4) of section 5136A of the Revised Statutes of the
 12 United States shall be deemed to be a subsidiary of a bank
 13 holding company, and not a subsidiary of a bank.”.

14 **SEC. 123. MISREPRESENTATIONS REGARDING DEPOSITORY**
 15 **INSTITUTION LIABILITY FOR OBLIGATIONS**
 16 **OF AFFILIATES.**

17 (a) IN GENERAL.—Chapter 47 of title 18, United
 18 States Code, is amended by inserting after section 1007
 19 the following new section:

20 **“§ 1008. Misrepresentations regarding financial insti-**
 21 **tution liability for obligations of affiliates**

22 “(a) IN GENERAL.—No institution-affiliated party of
 23 an insured depository institution or institution-affiliated
 24 party of a subsidiary or affiliate of an insured depository
 25 institution shall fraudulently represent that the institution

1 is or will be liable for any obligation of a subsidiary or
2 other affiliate of the institution.

3 “(b) CRIMINAL PENALTY.—Whoever violates sub-
4 section (a) shall be fined under this title, imprisoned for
5 not more than 5 years, or both.

6 “(c) INSTITUTION-AFFILIATED PARTY DEFINED.—
7 For purposes of this section, the term ‘institution-affili-
8 ated party’ has the same meaning as in section 3 of the
9 Federal Deposit Insurance Act and any reference in that
10 section shall also be deemed to refer to a subsidiary or
11 affiliate of an insured depository institution.

12 “(d) OTHER DEFINITIONS.—For purposes of this
13 section, the terms ‘affiliate’, ‘insured depository institu-
14 tion’, and ‘subsidiary’ have same meanings as in section
15 3 of the Federal Deposit Insurance Act.”.

16 (b) CLERICAL AMENDMENT.—The table of sections
17 for chapter 47 of title 18, United States Code, is amended
18 by inserting after the item relating to section 1007 the
19 following new item:

“1008. Misrepresentations regarding financial institution liability for obligations
of affiliates.”.

20 **SEC. 124. REPEAL OF STOCK LOAN LIMIT IN FEDERAL RE-**
21 **SERVE ACT.**

22 Section 11 of the Federal Reserve Act (12 U.S.C.
23 248) is amended by striking the paragraph designated as
24 “(m)” and inserting “(m) [Repealed]”.

1 **Subtitle D—Wholesale Financial**
 2 **Holding Companies; Wholesale**
 3 **Financial Institutions**

4 **CHAPTER 1—WHOLESALE FINANCIAL**
 5 **HOLDING COMPANIES**

6 **SEC. 131. WHOLESALE FINANCIAL HOLDING COMPANIES**
 7 **ESTABLISHED.**

8 Section 10 of the Bank Holding Company Act of
 9 1956 (12 U.S.C. 1841 et seq.) is amended to read as fol-
 10 lows:

11 **“SEC. 10. WHOLESALE FINANCIAL HOLDING COMPANIES.**

12 “(a) COMPANIES THAT CONTROL WHOLESALE FI-
 13 NANCIAL INSTITUTIONS.—

14 “(1) WHOLESALE FINANCIAL HOLDING COM-
 15 PANY DEFINED.—The term ‘wholesale financial
 16 holding company’ means any company that—

17 “(A) is registered as a bank holding com-
 18 pany;

19 “(B) is predominantly engaged in financial
 20 activities as defined in section 6(f)(2);

21 “(C) controls one or more wholesale finan-
 22 cial institutions;

23 “(D) does not control—

24 “(i) a bank other than a wholesale fi-
 25 nancial institution;

1 “(ii) an insured bank other than an
 2 institution permitted under subparagraph
 3 (D), (F), or (G) of section 2(c)(2); or

4 “(iii) a savings association; and

5 “(E) is not a foreign bank (as defined in
 6 section 1(b)(7) of the International Banking
 7 Act of 1978).

8 “(2) SAVINGS ASSOCIATION TRANSITION PE-
 9 RIOD.—Notwithstanding paragraph (1)(D)(iii), the
 10 Board may permit a company that controls a sav-
 11 ings association and that otherwise meets the re-
 12 quirements of paragraph (1) to become supervised
 13 under paragraph (1), if the company divests control
 14 of any such savings association within such period
 15 not to exceed 5 years after becoming supervised
 16 under paragraph (1) as permitted by the Board.

17 “(b) SUPERVISION BY THE BOARD.—

18 “(1) IN GENERAL.—The provisions of this sec-
 19 tion shall govern the reporting, examination, and
 20 capital requirements of wholesale financial holding
 21 companies.

22 “(2) REPORTS.—

23 “(A) IN GENERAL.—The Board from time
 24 to time may require any wholesale financial
 25 holding company and any subsidiary of such

1 company to submit reports under oath to keep
2 the Board informed as to—

3 “(i) the company’s or subsidiary’s ac-
4 tivities, financial condition, policies, sys-
5 tems for monitoring and controlling finan-
6 cial and operational risks, and transactions
7 with depository institution subsidiaries of
8 the holding company; and

9 “(ii) the extent to which the company
10 or subsidiary has complied with the provi-
11 sions of this Act and regulations prescribed
12 and orders issued under this Act.

13 “(B) USE OF EXISTING REPORTS.—

14 “(i) IN GENERAL.—The Board shall,
15 to the fullest extent possible, accept re-
16 ports in fulfillment of the Board’s report-
17 ing requirements under this paragraph
18 that the wholesale financial holding com-
19 pany or any subsidiary of such company
20 has provided or been required to provide to
21 other Federal and State supervisors or to
22 appropriate self-regulatory organizations.

23 “(ii) AVAILABILITY.—A wholesale fi-
24 nancial holding company or a subsidiary of
25 such company shall provide to the Board,

1 at the request of the Board, a report re-
2 ferred to in clause (i).

3 “(C) EXEMPTIONS FROM REPORTING RE-
4 QUIREMENTS.—

5 “(i) IN GENERAL.—The Board may,
6 by regulation or order, exempt any com-
7 pany or class of companies, under such
8 terms and conditions and for such periods
9 as the Board shall provide in such regula-
10 tion or order, from the provisions of this
11 paragraph and any regulation prescribed
12 under this paragraph.

13 “(ii) CRITERIA FOR CONSIDER-
14 ATION.—In making any determination
15 under clause (i) with regard to any exemp-
16 tion under such clause, the Board shall
17 consider, among such other factors as the
18 Board may determine to be appropriate,
19 the following factors:

20 “(I) Whether information of the
21 type required under this paragraph is
22 available from a supervisory agency
23 (as defined in section 1101(7) of the
24 Right to Financial Privacy Act of

1 1978) or a foreign regulatory author-
2 ity of a similar type.

3 “(II) The primary business of the
4 company.

5 “(III) The nature and extent of
6 the domestic and foreign regulation of
7 the activities of the company.

8 “(3) EXAMINATIONS.—

9 “(A) LIMITED USE OF EXAMINATION AU-
10 THORITY.—The Board may make examinations
11 of each wholesale financial holding company
12 and each subsidiary of such company in order
13 to—

14 “(i) inform the Board regarding the
15 nature of the operations and financial con-
16 dition of the wholesale financial holding
17 company and its subsidiaries;

18 “(ii) inform the Board regarding—

19 “(I) the financial and operational
20 risks within the wholesale financial
21 holding company system that may af-
22 fect any depository institution owned
23 by such holding company; and

24 “(II) the systems of the holding
25 company and its subsidiaries for mon-

1 itoring and controlling those risks;
2 and

3 “(iii) monitor compliance with the
4 provisions of this Act and those governing
5 transactions and relationships between any
6 depository institution controlled by the
7 wholesale financial holding company and
8 any of the company’s other subsidiaries.

9 “(B) RESTRICTED FOCUS OF EXAMINA-
10 TIONS.—The Board shall, to the fullest extent
11 possible, limit the focus and scope of any exam-
12 ination of a wholesale financial holding com-
13 pany under this paragraph to—

14 “(i) the holding company; and

15 “(ii) any subsidiary (other than an in-
16 sured depository institution subsidiary) of
17 the holding company that, because of the
18 size, condition, or activities of the sub-
19 sidiary, the nature or size of transactions
20 between such subsidiary and any affiliated
21 depository institution, or the centralization
22 of functions within the holding company
23 system, could have a materially adverse ef-
24 fect on the safety and soundness of any de-

1 pository institution affiliate of the holding
2 company.

3 “(C) DEFERENCE TO BANK EXAMINA-
4 TIONS.—The Board shall, to the fullest extent
5 possible, use the reports of examination of de-
6 pository institutions made by the Comptroller of
7 the Currency, the Federal Deposit Insurance
8 Corporation, the Director of the Office of Thrift
9 Supervision or the appropriate State depository
10 institution supervisory authority for the pur-
11 poses of this section.

12 “(D) DEFERENCE TO OTHER EXAMINA-
13 TIONS.—The Board shall, to the fullest extent
14 possible, address the circumstances which might
15 otherwise permit or require an examination by
16 the Board by forgoing an examination and by
17 instead reviewing the reports of examination
18 made of—

19 “(i) any registered broker or dealer or
20 any registered investment adviser by or on
21 behalf of the Commission; and

22 “(ii) any licensed insurance company
23 by or on behalf of any State government
24 insurance agency responsible for the super-
25 vision of the insurance company.

1 “(E) CONFIDENTIALITY OF REPORTED IN-
2 FORMATION.—

3 “(i) IN GENERAL.—Notwithstanding
4 any other provision of law, the Board shall
5 not be compelled to disclose any nonpublic
6 information required to be reported under
7 this paragraph, or any information sup-
8 plied to the Board by any domestic or for-
9 eign regulatory agency, that relates to the
10 financial or operational condition of any
11 wholesale financial holding company or any
12 subsidiary of such company.

13 “(ii) COMPLIANCE WITH REQUESTS
14 FOR INFORMATION.—No provision of this
15 subparagraph shall be construed as author-
16 izing the Board to withhold information
17 from the Congress, or preventing the
18 Board from complying with a request for
19 information from any other Federal de-
20 partment or agency for purposes within the
21 scope of such department’s or agency’s ju-
22 risdiction, or from complying with any
23 order of a court of competent jurisdiction
24 in an action brought by the United States
25 or the Board.

1 “(iii) COORDINATION WITH OTHER
2 LAW.—For purposes of section 552 of title
3 5, United States Code, this subparagraph
4 shall be considered to be a statute de-
5 scribed in subsection (b)(3)(B) of such sec-
6 tion.

7 “(iv) DESIGNATION OF CONFIDENTIAL
8 INFORMATION.—In prescribing regulations
9 to carry out the requirements of this sub-
10 section, the Board shall designate informa-
11 tion described in or obtained pursuant to
12 this paragraph as confidential information.

13 “(F) COSTS.—The cost of any examination
14 conducted by the Board under this section may
15 be assessed against, and made payable by, the
16 wholesale financial holding company.

17 “(4) CAPITAL ADEQUACY GUIDELINES.—

18 “(A) CAPITAL ADEQUACY PROVISIONS.—
19 Subject to the requirements of, and solely in ac-
20 cordance with, the terms of this paragraph, the
21 Board may adopt capital adequacy rules or
22 guidelines for wholesale financial holding com-
23 panies.

1 “(B) METHOD OF CALCULATION.—In de-
2 veloping rules or guidelines under this para-
3 graph, the following provisions shall apply:

4 “(i) FOCUS ON DOUBLE LEVERAGE.—
5 The Board shall focus on the use by whole-
6 sale financial holding companies of debt
7 and other liabilities to fund capital invest-
8 ments in subsidiaries.

9 “(ii) NO UNWEIGHTED CAPITAL
10 RATIO.—The Board shall not, by regula-
11 tion, guideline, order, or otherwise, impose
12 under this section a capital ratio that is
13 not based on appropriate risk-weighting
14 considerations.

15 “(iii) NO CAPITAL REQUIREMENT ON
16 REGULATED ENTITIES.—The Board shall
17 not, by regulation, guideline, order or oth-
18 erwise, prescribe or impose any capital or
19 capital adequacy rules, standards, guide-
20 lines, or requirements upon any subsidiary
21 that—

22 “(I) is not a depository institu-
23 tion; and

24 “(II) is in compliance with appli-
25 cable capital requirements of another

1 Federal regulatory authority (includ-
2 ing the Securities and Exchange Com-
3 mission) or State insurance authority.

4 “(iv) LIMITATION.—The Board shall
5 not, by regulation, guideline, order or oth-
6 erwise, prescribe or impose any capital or
7 capital adequacy rules, standards, guide-
8 lines, or requirements upon any subsidiary
9 that is not a depository institution and
10 that is registered as an investment adviser
11 under the Investment Advisers Act of
12 1940, except that this clause shall not be
13 construed as preventing the Board from
14 imposing capital or capital adequacy rules,
15 guidelines, standards, or requirements with
16 respect to activities of a registered invest-
17 ment adviser other than investment advi-
18 sory activities or activities incidental to in-
19 vestment advisory activities.

20 “(v) LIMITATIONS ON INDIRECT AC-
21 TION.—In developing, establishing, or as-
22 sessing holding company capital or capital
23 adequacy rules, guidelines, standards, or
24 requirements for purposes of this para-
25 graph, the Board shall not take into ac-

1 count the activities, operations, or invest-
2 ments of an affiliated investment company
3 registered under the Investment Company
4 Act of 1940, unless the investment com-
5 pany is—

6 “(I) a bank holding company; or

7 “(II) controlled by a bank hold-

8 ing company by reason of ownership

9 by the bank holding company (includ-

10 ing through all of its affiliates) of 25

11 percent or more of the shares of the

12 investment company, and the shares

13 owned by the bank holding company

14 have a market value equal to more

15 than \$1,000,000.

16 “(vi) APPROPRIATE EXCLUSIONS.—

17 The Board shall take full account of—

18 “(I) the capital requirements

19 made applicable to any subsidiary that

20 is not a depository institution by an-

21 other Federal regulatory authority or

22 State insurance authority; and

23 “(II) industry norms for capital-

24 ization of a company’s unregulated

25 subsidiaries and activities.

1 “(vii) INTERNAL RISK MANAGEMENT
2 MODELS.—The Board may incorporate in-
3 ternal risk management models of whole-
4 sale financial holding companies into its
5 capital adequacy guidelines or rules and
6 may take account of the extent to which
7 resources of a subsidiary depository insti-
8 tution may be used to service the debt or
9 other liabilities of the wholesale financial
10 holding company.

11 “(c) NONFINANCIAL ACTIVITIES AND INVEST-
12 MENTS.—

13 “(1) GRANDFATHERED ACTIVITIES.—

14 “(A) IN GENERAL.—Notwithstanding sec-
15 tion 4(a), a company that becomes a wholesale
16 financial holding company may continue to en-
17 gage, directly or indirectly, in any activity and
18 may retain ownership and control of shares of
19 a company engaged in any activity if—

20 “(i) on the date of the enactment of
21 the Financial Services Act of 1999, such
22 wholesale financial holding company was
23 lawfully engaged in that nonfinancial activ-
24 ity, held the shares of such company, or
25 had entered into a contract to acquire

1 shares of any company engaged in such ac-
2 tivity; and

3 “(ii) the company engaged in such ac-
4 tivity continues to engage only in the same
5 activities that such company conducted on
6 the date of the enactment of the Financial
7 Services Act of 1999, and other activities
8 permissible under this Act.

9 “(B) NO EXPANSION OF GRANDFATHERED
10 COMMERCIAL ACTIVITIES THROUGH MERGER OR
11 CONSOLIDATION.—A wholesale financial holding
12 company that engages in activities or holds
13 shares pursuant to this paragraph, or a sub-
14 sidiary of such wholesale financial holding com-
15 pany, may not acquire, in any merger, consoli-
16 dation, or other type of business combination,
17 assets of any other company which is engaged
18 in any activity which the Board has not deter-
19 mined to be financial in nature or incidental to
20 activities that are financial in nature under sec-
21 tion 6(c).

22 “(C) LIMITATION TO SINGLE EXEMP-
23 TION.—No company that engages in any activ-
24 ity or controls any shares under subsection (f)

1 of section 6 may engage in any activity or own
2 any shares pursuant to this paragraph.

3 “(2) COMMODITIES.—

4 “(A) IN GENERAL.—Notwithstanding sec-
5 tion 4(a), a wholesale financial holding company
6 which was predominately engaged as of Janu-
7 ary 1, 1997, in financial activities in the United
8 States (or any successor to any such company)
9 may engage in, or directly or indirectly own or
10 control shares of a company engaged in, activi-
11 ties related to the trading, sale, or investment
12 in commodities and underlying physical prop-
13 erties that were not permissible for bank hold-
14 ing companies to conduct in the United States
15 as of January 1, 1997, if such wholesale finan-
16 cial holding company, or any subsidiary of such
17 holding company, was engaged directly, indi-
18 rectly, or through any such company in any of
19 such activities as of January 1, 1997, in the
20 United States.

21 “(B) LIMITATION.—The attributed aggre-
22 gate consolidated assets of a wholesale financial
23 holding company held under the authority
24 granted under this paragraph and not otherwise
25 permitted to be held by all wholesale financial

1 holding companies under this section may not
2 exceed 5 percent of the total consolidated assets
3 of the wholesale financial holding company, ex-
4 cept that the Board may increase such percent-
5 age of total consolidated assets by such
6 amounts and under such circumstances as the
7 Board considers appropriate, consistent with
8 the purposes of this Act.

9 “(3) CROSS MARKETING RESTRICTIONS.—A
10 wholesale financial holding company shall not
11 permit—

12 “(A) any company whose shares it owns or
13 controls pursuant to paragraph (1) or (2) to
14 offer or market any product or service of an af-
15 filiated wholesale financial institution; or

16 “(B) any affiliated wholesale financial in-
17 stitution to offer or market any product or serv-
18 ice of any company whose shares are owned or
19 controlled by such wholesale financial holding
20 company pursuant to such paragraphs.

21 “(d) QUALIFICATION OF FOREIGN BANK AS WHOLE-
22 SALE FINANCIAL HOLDING COMPANY.—

23 “(1) IN GENERAL.—Any foreign bank, or any
24 company that owns or controls a foreign bank, that
25 operates a branch, agency, or commercial lending

1 company in the United States, including a foreign
2 bank or company that owns or controls a wholesale
3 financial institution, may request a determination
4 from the Board that such bank or company be treat-
5 ed as a wholesale financial holding company other
6 than for purposes of subsection (c), subject to such
7 conditions as the Board considers appropriate, giv-
8 ing due regard to the principle of national treatment
9 and equality of competitive opportunity and the re-
10 quirements imposed on domestic banks and compa-
11 nies.

12 “(2) CONDITIONS FOR TREATMENT AS A
13 WHOLESALE FINANCIAL HOLDING COMPANY.—A for-
14 eign bank and a company that owns or controls a
15 foreign bank may not be treated as a wholesale fi-
16 nancial holding company unless the bank and com-
17 pany meet and continue to meet the following cri-
18 teria:

19 “(A) NO INSURED DEPOSITS.—No deposits
20 held directly by a foreign bank or through an
21 affiliate (other than an institution described in
22 subparagraph (D) or (F) of section 2(c)(2)) are
23 insured under the Federal Deposit Insurance
24 Act.

1 “(B) CAPITAL STANDARDS.—The foreign
2 bank meets risk-based capital standards com-
3 parable to the capital standards required for a
4 wholesale financial institution, giving due re-
5 gard to the principle of national treatment and
6 equality of competitive opportunity.

7 “(C) TRANSACTION WITH AFFILIATES.—
8 Transactions between a branch, agency, or com-
9 mercial lending company subsidiary of the for-
10 eign bank in the United States, and any securi-
11 ties affiliate or company in which the foreign
12 bank (or any company that owns or controls
13 such foreign bank) has invested, directly or in-
14 directly, and which engages in any activity pur-
15 suant to subsection (c) or (g) of section 6, com-
16 ply with the provisions of sections 23A and 23B
17 of the Federal Reserve Act in the same manner
18 and to the same extent as such transactions
19 would be required to comply with such sections
20 if the bank were a member bank.

21 “(3) TREATMENT AS A WHOLESALE FINANCIAL
22 INSTITUTION.—Any foreign bank which is, or is af-
23 filiated with a company which is, treated as a whole-
24 sale financial holding company under this subsection
25 shall be treated as a wholesale financial institution

1 for purposes of subsections (c)(1)(C) and (c)(3) of
2 section 9B of the Federal Reserve Act, and any such
3 foreign bank or company shall be subject to para-
4 graphs (3), (4), and (5) of section 9B(d) of the Fed-
5 eral Reserve Act, except that the Board may adopt
6 such modifications, conditions, or exemptions as the
7 Board deems appropriate, giving due regard to the
8 principle of national treatment and equality of com-
9 petitive opportunity.

10 “(4) SUPERVISION OF FOREIGN BANK WHICH
11 MAINTAINS NO BANKING PRESENCE OTHER THAN
12 CONTROL OF A WHOLESALE FINANCIAL INSTITU-
13 TION.—A foreign bank that owns or controls a
14 wholesale financial institution but does not operate
15 a branch, agency, or commercial lending company in
16 the United States (and any company that owns or
17 controls such foreign bank) may request a deter-
18 mination from the Board that such bank or com-
19 pany be treated as a wholesale financial holding
20 company, except that such bank or company shall be
21 subject to the restrictions of paragraphs (2)(A) and
22 (3) of this subsection.

23 “(5) NO EFFECT ON OTHER PROVISIONS.—This
24 section shall not be construed as limiting the author-
25 ity of the Board under the International Banking

1 Act of 1978 with respect to the regulation, super-
2 vision, or examination of foreign banks and their of-
3 fices and affiliates in the United States.

4 “(6) APPLICABILITY OF COMMUNITY REINVEST-
5 MENT ACT OF 1977.—The branches in the United
6 States of a foreign bank that is, or is affiliated with
7 a company that is, treated as a wholesale financial
8 holding company shall be subject to section
9 9B(b)(11) of the Federal Reserve Act as if the for-
10 eign bank were a wholesale financial institution
11 under such section. The Board and the Comptroller
12 of the Currency shall apply the provisions of sections
13 803(2), 804, and 807(1) of the Community Rein-
14 vestment Act of 1977 to branches of foreign banks
15 which receive only such deposits as are permissible
16 for receipt by a corporation organized under section
17 25A of the Federal Reserve Act, in the same manner
18 and to the same extent such sections apply to such
19 a corporation.”.

20 **SEC. 132. AUTHORIZATION TO RELEASE REPORTS.**

21 (a) FEDERAL RESERVE ACT.—The last sentence of
22 the eighth undesignated paragraph of section 9 of the
23 Federal Reserve Act (12 U.S.C. 326) is amended to read
24 as follows: “The Board of Governors of the Federal Re-
25 serve System, at its discretion, may furnish reports of ex-

1 amination or other confidential supervisory information
 2 concerning State member banks or any other entities ex-
 3 amined under any other authority of the Board to any
 4 Federal or State authorities with supervisory or regulatory
 5 authority over the examined entity, to officers, directors,
 6 or receivers of the examined entity, and to any other per-
 7 son that the Board determines to be proper.”.

8 (b) COMMODITY FUTURES TRADING COMMISSION.—
 9 The Right to Financial Privacy Act of 1978 (12 U.S.C.
 10 3401 et seq.) is amended—

11 (1) in section 1101(7) of the (12 U.S.C.
 12 3401(7))—

13 (A) by redesignating subparagraphs (G)
 14 and (H) as subparagraphs (H) and (I), respec-
 15 tively; and

16 (B) by inserting after subparagraph (F)
 17 the following new subparagraph:

18 “(G) the Commodity Futures Trading
 19 Commission; or”; and

20 (2) in section 1112(e), by striking “and the Se-
 21 curities and Exchange Commission” and inserting “,
 22 the Securities and Exchange Commission, and the
 23 Commodity Futures Trading Commission”.

24 **SEC. 133. CONFORMING AMENDMENTS.**

25 (a) BANK HOLDING COMPANY ACT OF 1956.—

1 (1) DEFINITIONS.—Section 2 of the Bank
 2 Holding Company Act of 1956 (12 U.S.C. 1841) is
 3 amended by inserting after subsection (p) (as added
 4 by section 103(b)(1)) the following new subsections:

5 “(q) WHOLESALE FINANCIAL INSTITUTION.—The
 6 term ‘wholesale financial institution’ means a wholesale fi-
 7 nancial institution subject to section 9B of the Federal
 8 Reserve Act.

9 “(r) COMMISSION.—The term ‘Commission’ means
 10 the Securities and Exchange Commission.

11 “(s) DEPOSITORY INSTITUTION.—The term ‘deposi-
 12 tory institution’—

13 “(1) has the meaning given to such term in sec-
 14 tion 3 of the Federal Deposit Insurance Act; and

15 “(2) includes a wholesale financial institution.”.

16 (2) DEFINITION OF BANK INCLUDES WHOLE-
 17 SALE FINANCIAL INSTITUTION.—Section 2(c)(1) of
 18 the Bank Holding Company Act of 1956 (12 U.S.C.
 19 1841(c)(1)) is amended by adding at the end the fol-
 20 lowing new subparagraph:

21 “(C) A wholesale financial institution.”.

22 (3) INCORPORATED DEFINITIONS.—Section
 23 2(n) of the Bank Holding Company Act of 1956 (12
 24 U.S.C. 1841(n)) is amended by inserting “‘insured
 25 bank’,” after “‘in danger of default’,”.

1 (4) EXCEPTION TO DEPOSIT INSURANCE RE-
 2 QUIREMENT.—Section 3(e) of the Bank Holding
 3 Company Act of 1956 (12 U.S.C. 1842(e)) is
 4 amended by adding at the end the following: “This
 5 subsection shall not apply to a wholesale financial
 6 institution.”.

7 (b) FEDERAL DEPOSIT INSURANCE ACT.—Section
 8 3(q)(2)(A) of the Federal Deposit Insurance Act (12
 9 U.S.C. 1813(q)(2)(A)) is amended to read as follows:

10 “(A) any State member insured bank (ex-
 11 cept a District bank) and any wholesale finan-
 12 cial institution subject to section 9B of the Fed-
 13 eral Reserve Act;”.

14 **CHAPTER 2—WHOLESALE FINANCIAL** 15 **INSTITUTIONS**

16 **SEC. 136. WHOLESALE FINANCIAL INSTITUTIONS.**

17 (a) NATIONAL WHOLESALE FINANCIAL INSTITU-
 18 TIONS.—

19 (1) IN GENERAL.—Chapter 1 of title LXII of
 20 the Revised Statutes of the United States (12
 21 U.S.C. 21 et seq.) is amended by inserting after sec-
 22 tion 5136A (as added by section 121(a) of this title)
 23 the following new section:

1 **“SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITU-**
2 **TIONS.**

3 “(a) AUTHORIZATION OF THE COMPTROLLER RE-
4 QUIRED.—A national bank may apply to the Comptroller
5 on such forms and in accordance with such regulations
6 as the Comptroller may prescribe, for permission to oper-
7 ate as a national wholesale financial institution.

8 “(b) REGULATION.—A national wholesale financial
9 institution may exercise, in accordance with such institu-
10 tion’s articles of incorporation and regulations issued by
11 the Comptroller, all the powers and privileges of a national
12 bank formed in accordance with section 5133 of the Re-
13 vised Statutes of the United States, subject to section 9B
14 of the Federal Reserve Act and the limitations and restric-
15 tions contained therein.

16 “(c) COMMUNITY REINVESTMENT ACT OF 1977.—A
17 national wholesale financial institution shall be subject to
18 the Community Reinvestment Act of 1977.

19 (2) CLERICAL AMENDMENT.—The table of sec-
20 tions for chapter 1 of title LXII of the Revised Stat-
21 utes of the United States is amended by inserting
22 after the item relating to section 5136A (as added
23 by section 121(d) of this title) the following new
24 item:

“5136B. National wholesale financial institutions.”.

1 (b) WHOLESALE FINANCIAL INSTITUTIONS.—The
2 Federal Reserve Act (12 U.S.C. 221 et seq.) is amended
3 by inserting after section 9A the following new section:

4 **“SEC. 9B. WHOLESALE FINANCIAL INSTITUTIONS.**

5 “(a) APPLICATION FOR MEMBERSHIP AS WHOLE-
6 SALE FINANCIAL INSTITUTION.—

7 “(1) APPLICATION REQUIRED.—

8 “(A) IN GENERAL.—Any bank may apply
9 to the Board of Governors of the Federal Re-
10 serve System to become a State wholesale fi-
11 nancial institution, or to the Comptroller of the
12 Currency to become a national wholesale finan-
13 cial institution, and, as a wholesale financial in-
14 stitution, to subscribe to the stock of the Fed-
15 eral Reserve bank organized within the district
16 where the applying bank is located.

17 “(B) TREATMENT AS MEMBER BANK.—
18 Any application under subparagraph (A) shall
19 be treated as an application under, and shall be
20 subject to the provisions of, section 9.

21 “(2) INSURANCE TERMINATION.—No bank the
22 deposits of which are insured under the Federal De-
23 posit Insurance Act may become a wholesale finan-
24 cial institution unless it has met all requirements

1 under that Act for voluntary termination of deposit
2 insurance.

3 “(b) GENERAL REQUIREMENTS APPLICABLE TO
4 WHOLESALE FINANCIAL INSTITUTIONS.—

5 “(1) FEDERAL RESERVE ACT.—Except as oth-
6 erwise provided in this section, wholesale financial
7 institutions shall be member banks and shall be sub-
8 ject to the provisions of this Act that apply to mem-
9 ber banks to the same extent and in the same man-
10 ner as State member insured banks or national
11 banks, except that a wholesale financial institution
12 may terminate membership under this Act only with
13 the prior written approval of the Board and on
14 terms and conditions that the Board determines are
15 appropriate to carry out the purposes of this Act.

16 “(2) PROMPT CORRECTIVE ACTION.—A whole-
17 sale financial institution shall be deemed to be an in-
18 sured depository institution for purposes of section
19 38 of the Federal Deposit Insurance Act except
20 that—

21 “(A) the relevant capital levels and capital
22 measures for each capital category shall be the
23 levels specified by the Board for wholesale fi-
24 nancial institutions;

1 “(B) subject to subparagraph (A), all ref-
2 erences to the appropriate Federal banking
3 agency or to the Corporation in that section
4 shall be deemed to be references to the Comp-
5 troller of the Currency, in the case of a national
6 wholesale financial institution, and to the
7 Board, in the case of all other wholesale finan-
8 cial institutions; and

9 “(C) in the case of wholesale financial in-
10 stitutions, the purpose of prompt corrective ac-
11 tion shall be to protect taxpayers and the finan-
12 cial system from the risks associated with the
13 operation and activities of wholesale financial
14 institutions.

15 “(3) ENFORCEMENT AUTHORITY.—Section
16 3(u), subsections (j) and (k) of section 7, sub-
17 sections (b) through (n), (s), (u), and (v) of section
18 8, and section 19 of the Federal Deposit Insurance
19 Act shall apply to a wholesale financial institution in
20 the same manner and to the same extent as such
21 provisions apply to State member insured banks or
22 national banks, as the case may be, and any ref-
23 erence in such sections to an insured depository in-
24 stitution shall be deemed to include a reference to a
25 wholesale financial institution.

1 “(4) CERTAIN OTHER STATUTES APPLICA-
2 BLE.—A wholesale financial institution shall be
3 deemed to be a banking institution, and the Board
4 shall be the appropriate Federal banking agency for
5 such bank and all such bank’s affiliates, for pur-
6 poses of the International Lending Supervision Act.

7 “(5) BANK MERGER ACT.—A wholesale finan-
8 cial institution shall be subject to sections 18(c) and
9 44 of the Federal Deposit Insurance Act in the same
10 manner and to the same extent the wholesale finan-
11 cial institution would be subject to such sections if
12 the institution were a State member insured bank or
13 a national bank.

14 “(6) BRANCHING.—Notwithstanding any other
15 provision of law, a wholesale financial institution
16 may establish and operate a branch at any location
17 on such terms and conditions as established by, and
18 with the approval of—

19 “(A) the Board, in the case of a State-
20 chartered wholesale financial institution; and

21 “(B) the Comptroller of the Currency, in
22 the case of a national bank wholesale financial
23 institution.

24 “(7) ACTIVITIES OF OUT-OF-STATE BRANCHES
25 OF WHOLESALE FINANCIAL INSTITUTIONS.—A

1 State-chartered wholesale financial institution shall
2 be deemed to be a State bank and an insured State
3 bank for purposes of paragraphs (1), (2), and (3) of
4 section 24(j) of the Federal Deposit Insurance Act.

5 “(8) DISCRIMINATION REGARDING INTEREST
6 RATES.—Section 27 of the Federal Deposit Insur-
7 ance Act shall apply to State-chartered wholesale fi-
8 nancial institutions in the same manner and to the
9 same extent as such provisions apply to State mem-
10 ber insured banks and any reference in such section
11 to a State-chartered insured depository institution
12 shall be deemed to include a reference to a State-
13 chartered wholesale financial institution.

14 “(9) PREEMPTION OF STATE LAWS REQUIRING
15 DEPOSIT INSURANCE FOR WHOLESALE FINANCIAL
16 INSTITUTIONS.—The appropriate State banking au-
17 thority may grant a charter to a wholesale financial
18 institution notwithstanding any State constitution or
19 statute requiring that the institution obtain insur-
20 ance of its deposits and any such State constitution
21 or statute is hereby preempted solely for purposes of
22 this paragraph.

23 “(10) PARITY FOR WHOLESALE FINANCIAL IN-
24 STITUTIONS.—A State bank that is a wholesale fi-
25 nancial institution under this section shall have all

1 of the rights, powers, privileges, and immunities (in-
2 cluding those derived from status as a federally
3 chartered institution) of and as if it were a national
4 bank, subject to such terms and conditions as estab-
5 lished by the Board.

6 “(11) COMMUNITY REINVESTMENT ACT OF
7 1977.—A State wholesale financial institution shall
8 be subject to the Community Reinvestment Act of
9 1977.

10 “(c) SPECIFIC REQUIREMENTS APPLICABLE TO
11 WHOLESALE FINANCIAL INSTITUTIONS.—

12 “(1) LIMITATIONS ON DEPOSITS.—

13 “(A) MINIMUM AMOUNT.—

14 “(i) IN GENERAL.—No wholesale fi-
15 nancial institution may receive initial de-
16 posits of \$100,000 or less, other than on
17 an incidental and occasional basis.

18 “(ii) LIMITATION ON DEPOSITS OF
19 LESS THAN \$100,000.—No wholesale finan-
20 cial institution may receive initial deposits
21 of \$100,000 or less if such deposits con-
22 stitute more than 5 percent of the institu-
23 tion’s total deposits.

24 “(B) NO DEPOSIT INSURANCE.—Except as
25 otherwise provided in section 8A(f) of the Fed-

1 eral Deposit Insurance Act, no deposits held by
2 a wholesale financial institution shall be insured
3 deposits under the Federal Deposit Insurance
4 Act.

5 “(C) ADVERTISING AND DISCLOSURE.—

6 The Board and the Comptroller of the Currency
7 shall prescribe jointly regulations pertaining to
8 advertising and disclosure by wholesale financial
9 institutions to ensure that each depositor is no-
10 tified that deposits at the wholesale financial in-
11 stitution are not federally insured or otherwise
12 guaranteed by the United States Government.

13 “(2) MINIMUM CAPITAL LEVELS APPLICABLE

14 TO WHOLESALE FINANCIAL INSTITUTIONS.—The
15 Board shall, by regulation, adopt capital require-
16 ments for wholesale financial institutions—

17 “(A) to account for the status of wholesale
18 financial institutions as institutions that accept
19 deposits that are not insured under the Federal
20 Deposit Insurance Act; and

21 “(B) to provide for the safe and sound op-
22 eration of the wholesale financial institution
23 without undue risk to creditors or other per-
24 sons, including Federal Reserve banks, engaged
25 in transactions with the bank.

1 “(3) ADDITIONAL REQUIREMENTS APPLICABLE
2 TO WHOLESALE FINANCIAL INSTITUTIONS.—In addi-
3 tion to any requirement otherwise applicable to State
4 member insured banks or applicable, under this sec-
5 tion, to wholesale financial institutions, the Board
6 may impose, by regulation or order, upon wholesale
7 financial institutions—

8 “(A) limitations on transactions, direct or
9 indirect, with affiliates to prevent—

10 “(i) the transfer of risk to the deposit
11 insurance funds; or

12 “(ii) an affiliate from gaining access
13 to, or the benefits of, credit from a Federal
14 Reserve bank, including overdrafts at a
15 Federal Reserve bank;

16 “(B) special clearing balance requirements;
17 and

18 “(C) any additional requirements that the
19 Board determines to be appropriate or nec-
20 essary to—

21 “(i) promote the safety and soundness
22 of the wholesale financial institution or any
23 insured depository institution affiliate of
24 the wholesale financial institution;

1 “(ii) prevent the transfer of risk to
2 the deposit insurance funds; or

3 “(iii) protect creditors and other per-
4 sons, including Federal Reserve banks, en-
5 gaged in transactions with the wholesale fi-
6 nancial institution.

7 “(4) EXEMPTIONS FOR WHOLESALE FINANCIAL
8 INSTITUTIONS.—The Board may, by regulation or
9 order, exempt any wholesale financial institution
10 from any provision applicable to a member bank
11 that is not a wholesale financial institution, if the
12 Board finds that such exemption is consistent
13 with—

14 “(A) the promotion of the safety and
15 soundness of the wholesale financial institution
16 or any insured depository institution affiliate of
17 the wholesale financial institution;

18 “(B) the protection of the deposit insur-
19 ance funds; and

20 “(C) the protection of creditors and other
21 persons, including Federal Reserve banks, en-
22 gaged in transactions with the wholesale finan-
23 cial institution.

24 “(5) LIMITATION ON TRANSACTIONS BETWEEN
25 A WHOLESALE FINANCIAL INSTITUTION AND AN IN-

1 SURED BANK.—For purposes of section 23A(d)(1) of
2 the Federal Reserve Act, a wholesale financial insti-
3 tution that is affiliated with an insured bank shall
4 not be a bank.

5 “(6) NO EFFECT ON OTHER PROVISIONS.—This
6 section shall not be construed as limiting the
7 Board’s authority over member banks or the author-
8 ity of the Comptroller of the Currency over national
9 banks under any other provision of law, or to create
10 any obligation for any Federal Reserve bank to
11 make, increase, renew, or extend any advance or dis-
12 count under this Act to any member bank or other
13 depository institution.

14 “(d) CAPITAL AND MANAGERIAL REQUIREMENTS.—

15 “(1) IN GENERAL.—A wholesale financial insti-
16 tution shall be well capitalized and well managed.

17 “(2) NOTICE TO COMPANY.—The Board shall
18 promptly provide notice to a company that controls
19 a wholesale financial institution whenever such
20 wholesale financial institution is not well capitalized
21 or well managed.

22 “(3) AGREEMENT TO RESTORE INSTITUTION.—
23 Not later than 45 days after the date of receipt of
24 a notice under paragraph (2) (or such additional pe-
25 riod not to exceed 90 days as the Board may per-

1 mit), the company shall execute an agreement ac-
2 ceptable to the Board to restore the wholesale finan-
3 cial institution to compliance with all of the require-
4 ments of paragraph (1).

5 “(4) LIMITATIONS UNTIL INSTITUTION RE-
6 STORED.—Until the wholesale financial institution is
7 restored to compliance with all of the requirements
8 of paragraph (1), the Board may impose such limi-
9 tations on the conduct or activities of the company
10 or any affiliate of the company as the Board deter-
11 mines to be appropriate under the circumstances.

12 “(5) FAILURE TO RESTORE.—If the company
13 does not execute and implement an agreement in ac-
14 cordance with paragraph (3), comply with any limi-
15 tation imposed under paragraph (4), restore the
16 wholesale financial institution to well capitalized sta-
17 tus not later than 180 days after the date of receipt
18 by the company of the notice described in paragraph
19 (2), or restore the wholesale financial institution to
20 well managed status within such period as the Board
21 may permit, the company shall, under such terms
22 and conditions as may be imposed by the Board sub-
23 ject to such extension of time as may be granted in
24 the discretion of the Board, divest control of its sub-
25 sidiary depository institutions.

1 “(6) WELL MANAGED DEFINED.—For purposes
2 of this subsection, the term ‘well managed’ has the
3 same meaning as in section 2 of the Bank Holding
4 Company Act of 1956.

5 “(e) RESOLUTION OF WHOLESALE FINANCIAL INSTI-
6 TUTIONS.—

7 “(1) CONSERVATORSHIP OR RECEIVERSHIP.—

8 “(A) APPOINTMENT.—The Board may ap-
9 point a conservator or receiver to take posses-
10 sion and control of a wholesale financial institu-
11 tion to the same extent and in the same manner
12 as the Comptroller of the Currency may appoint
13 a conservator or receiver for a national bank.

14 “(B) POWERS.—The conservator or re-
15 ceiver for a wholesale financial institution shall
16 exercise the same powers, functions, and duties,
17 subject to the same limitations, as a conser-
18 vator or receiver for a national bank.

19 “(2) BOARD AUTHORITY.—The Board shall
20 have the same authority with respect to any conser-
21 vator or receiver appointed under paragraph (1),
22 and the wholesale financial institution for which it
23 has been appointed, as the Comptroller of the Cur-
24 rency has with respect to a conservator or receiver

1 for a national bank and the national bank for which
2 the conservator or receiver has been appointed.

3 “(3) BANKRUPTCY PROCEEDINGS.—The Comp-
4 troller of the Currency (in the case of a national
5 wholesale financial institution) or the Board may di-
6 rect the conservator or receiver of a wholesale finan-
7 cial institution to file a petition pursuant to title 11,
8 United States Code, in which case, title 11, United
9 States Code, shall apply to the wholesale financial
10 institution in lieu of otherwise applicable Federal or
11 State insolvency law.

12 “(f) BOARD BACKUP AUTHORITY.—

13 “(1) NOTICE TO THE COMPTROLLER.—Before
14 taking any action under section 8 of the Federal De-
15 posit Insurance Act involving a wholesale financial
16 institution that is chartered as a national bank, the
17 Board shall notify the Comptroller and recommend
18 that the Comptroller take appropriate action. If the
19 Comptroller fails to take the recommended action or
20 to provide an acceptable plan for addressing the con-
21 cerns of the Board before the close of the 30-day pe-
22 riod beginning on the date of receipt of the formal
23 recommendation from the Board, the Board may
24 take such action.

1 “(2) EXIGENT CIRCUMSTANCES.—Notwith-
2 standing paragraph (1), the Board may exercise its
3 authority without regard to the time period set forth
4 in paragraph (1) where the Board finds that exigent
5 circumstances exist and the Board notifies the
6 Comptroller of the Board’s action and of the exigent
7 circumstances.

8 “(g) EXCLUSIVE JURISDICTION.—Subsections (c)
9 and (e) of section 43 of the Federal Deposit Insurance
10 Act shall not apply to any wholesale financial institution.”.

11 (c) VOLUNTARY TERMINATION OF INSURED STATUS
12 BY CERTAIN INSTITUTIONS.—

13 (1) SECTION 8 DESIGNATIONS.—Section 8(a) of
14 the Federal Deposit Insurance Act (12 U.S.C.
15 1818(a)) is amended—

16 (A) by striking paragraph (1); and

17 (B) by redesignating paragraphs (2)
18 through (10) as paragraphs (1) through (9), re-
19 spectively.

20 (2) VOLUNTARY TERMINATION OF INSURED
21 STATUS.—The Federal Deposit Insurance Act (12
22 U.S.C. 1811 et seq.) is amended by inserting after
23 section 8 the following new section:

1 **“SEC. 8A. VOLUNTARY TERMINATION OF STATUS AS IN-**
2 **SURED DEPOSITORY INSTITUTION.**

3 “(a) IN GENERAL.—Except as provided in subsection
4 (b), an insured State bank or a national bank may volun-
5 tarily terminate such bank’s status as an insured deposi-
6 tory institution in accordance with regulations of the Cor-
7 poration if—

8 “(1) the bank provides written notice of the
9 bank’s intent to terminate such insured status—

10 “(A) to the Corporation and the Board of
11 Governors of the Federal Reserve System, in
12 the case of an insured State bank, or to the
13 Corporation and the Comptroller of the Cur-
14 rency, in the case of an insured national bank
15 authorized to operate as a wholesale financial
16 institution, not less than 6 months before the
17 effective date of such termination; and

18 “(B) to all depositors at such bank, not
19 less than 6 months before the effective date of
20 the termination of such status; and

21 “(2) either—

22 “(A) the deposit insurance fund of which
23 such bank is a member equals or exceeds the
24 fund’s designated reserve ratio as of the date
25 the bank provides a written notice under para-
26 graph (1) and the Corporation determines that

1 the fund will equal or exceed the applicable des-
2 ignated reserve ratio for the 2 semiannual as-
3 sessment periods immediately following such
4 date; or

5 “(B) the Corporation and the Board of
6 Governors of the Federal Reserve System, in
7 the case of an insured State bank, or the Cor-
8 poration and the Comptroller of the Currency,
9 in the case of an insured national bank author-
10 ized to operate as a wholesale financial institu-
11 tion, has approved the termination of the
12 bank’s insured status and the bank pays an exit
13 fee in accordance with subsection (e).

14 “(b) EXCEPTION.—Subsection (a) shall not apply
15 with respect to—

16 “(1) an insured savings association; or

17 “(2) an insured branch that is required to be
18 insured under subsection (a) or (b) of section 6 of
19 the International Banking Act of 1978.

20 “(c) ELIGIBILITY FOR INSURANCE TERMINATED.—
21 Any bank that voluntarily elects to terminate the bank’s
22 insured status under subsection (a) shall not be eligible
23 for insurance on any deposits or any assistance authorized
24 under this Act after the period specified in subsection
25 (f)(1).

1 “(d) INSTITUTION MUST BECOME WHOLESALE FI-
2 NANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING
3 ACTIVITIES.—Any depository institution which voluntarily
4 terminates such institution’s status as an insured deposi-
5 tory institution under this section may not, upon termi-
6 nation of insurance, accept any deposits unless the institu-
7 tion is a wholesale financial institution subject to section
8 9B of the Federal Reserve Act.

9 “(e) EXIT FEES.—

10 “(1) IN GENERAL.—Any bank that voluntarily
11 terminates such bank’s status as an insured deposi-
12 tory institution under this section shall pay an exit
13 fee in an amount that the Corporation determines is
14 sufficient to account for the institution’s pro rata
15 share of the amount (if any) which would be re-
16 quired to restore the relevant deposit insurance fund
17 to the fund’s designated reserve ratio as of the date
18 the bank provides a written notice under subsection
19 (a)(1).

20 “(2) PROCEDURES.—The Corporation shall pre-
21 scribe, by regulation, procedures for assessing any
22 exit fee under this subsection.

23 “(f) TEMPORARY INSURANCE OF DEPOSITS INSURED
24 AS OF TERMINATION.—

1 “(1) TRANSITION PERIOD.—The insured depos-
2 its of each depositor in a State bank or a national
3 bank on the effective date of the voluntary termi-
4 nation of the bank’s insured status, less all subse-
5 quent withdrawals from any deposits of such deposi-
6 tor, shall continue to be insured for a period of not
7 less than 6 months and not more than 2 years, as
8 determined by the Corporation. During such period,
9 no additions to any such deposits, and no new de-
10 posits in the depository institution made after the ef-
11 fective date of such termination shall be insured by
12 the Corporation.

13 “(2) TEMPORARY ASSESSMENTS; OBLIGATIONS
14 AND DUTIES.—During the period specified in para-
15 graph (1) with respect to any bank, the bank shall
16 continue to pay assessments under section 7 as if
17 the bank were an insured depository institution. The
18 bank shall, in all other respects, be subject to the
19 authority of the Corporation and the duties and obli-
20 gations of an insured depository institution under
21 this Act during such period, and in the event that
22 the bank is closed due to an inability to meet the de-
23 mands of the bank’s depositors during such period,
24 the Corporation shall have the same powers and

1 rights with respect to such bank as in the case of
2 an insured depository institution.

3 “(g) ADVERTISEMENTS.—

4 “(1) IN GENERAL.—A bank that voluntarily
5 terminates the bank’s insured status under this sec-
6 tion shall not advertise or hold itself out as having
7 insured deposits, except that the bank may advertise
8 the temporary insurance of deposits under sub-
9 section (f) if, in connection with any such advertise-
10 ment, the advertisement also states with equal prom-
11 inence that additions to deposits and new deposits
12 made after the effective date of the termination are
13 not insured.

14 “(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS,
15 AND SECURITIES.—Any certificate of deposit or
16 other obligation or security issued by a State bank
17 or a national bank after the effective date of the vol-
18 untary termination of the bank’s insured status
19 under this section shall be accompanied by a con-
20 spicuous, prominently displayed notice that such cer-
21 tificate of deposit or other obligation or security is
22 not insured under this Act.

23 “(h) NOTICE REQUIREMENTS.—

1 “(1) NOTICE TO THE CORPORATION.—The no-
 2 tice required under subsection (a)(1)(A) shall be in
 3 such form as the Corporation may require.

4 “(2) NOTICE TO DEPOSITORS.—The notice re-
 5 quired under subsection (a)(1)(B) shall be—

6 “(A) sent to each depositor’s last address
 7 of record with the bank; and

8 “(B) in such manner and form as the Cor-
 9 poration finds to be necessary and appropriate
 10 for the protection of depositors.”.

11 (3) DEFINITION.—Section 19(b)(1)(A)(i) of the
 12 Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)) is
 13 amended by inserting “, or any wholesale financial
 14 institution subject to section 9B of this Act” after
 15 “such Act”.

16 (d) TECHNICAL AND CONFORMING AMENDMENTS TO
 17 THE BANKRUPTCY CODE.—

18 (1) BANKRUPTCY CODE DEBTORS.—Section
 19 109(b)(2) of title 11, United States Code, is amend-
 20 ed by striking “; or” and inserting the following: “,
 21 except that—

22 “(A) a wholesale financial institution es-
 23 tablished under section 5136B of the Revised
 24 Statutes of the United States or section 9B of
 25 the Federal Reserve Act may be a debtor if a

petition is filed at the direction of the Comptroller of the Currency (in the case of a wholesale financial institution established under section 5136B of the Revised Statutes of the United States) or the Board of Governors of the Federal Reserve System (in the case of any wholesale financial institution); and

“(B) a corporation organized under section 25A of the Federal Reserve Act may be a debtor if a petition is filed at the direction of the Board of Governors of the Federal Reserve System; or”.

(2) CHAPTER 7 DEBTORS.—Section 109(d) of title 11, United States Code, is amended to read as follows:

“(d) Only a railroad and a person that may be a debtor or under chapter 7 of this title, except that a stockbroker, a wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act, a corporation organized under section 25A of the Federal Reserve Act, or a commodity broker, may be a debtor under chapter 11 of this title.”.

1 (3) DEFINITION OF FINANCIAL INSTITUTION.—

2 Section 101(22) of title 11, United States Code, is
3 amended to read as follows:

4 “(22) ‘financial institution’ means a person that
5 is a commercial or savings bank, industrial savings
6 bank, savings and loan association, trust company,
7 wholesale financial institution established under sec-
8 tion 5136B of the Revised Statutes of the United
9 States or section 9B of the Federal Reserve Act, or
10 corporation organized under section 25A of the Fed-
11 eral Reserve Act and, when any such person is act-
12 ing as agent or custodian for a customer in connec-
13 tion with a securities contract, as defined in section
14 741 of this title, such customer,”.

15 (4) SUBCHAPTER V OF CHAPTER 7.—

16 (A) IN GENERAL.—Section 103 of title 11,
17 United States Code, is amended—

18 (i) by redesignating subsections (e)
19 through (i) as subsections (f) through (j),
20 respectively; and

21 (ii) by inserting after subsection (d)
22 the following:

23 “(e) Subchapter V of chapter 7 of this title applies
24 only in a case under such chapter concerning the liquida-
25 tion of a wholesale financial institution established under

1 section 5136B of the Revised Statutes of the United
2 States or section 9B of the Federal Reserve Act, or a cor-
3 poration organized under section 25A of the Federal Re-
4 serve Act.”.

5 (B) WHOLESALE BANK LIQUIDATION.—

6 Chapter 7 of title 11, United States Code, is
7 amended by adding at the end the following:

8 “SUBCHAPTER V—WHOLESALE BANK
9 LIQUIDATION

10 **“§ 781. Definitions for subchapter**

11 “In this subchapter—

12 “(1) the term ‘Board’ means the Board of Gov-
13 ernors of the Federal Reserve System;

14 “(2) the term ‘depository institution’ has the
15 same meaning as in section 3 of the Federal Deposit
16 Insurance Act, and includes any wholesale bank;

17 “(3) the term ‘national wholesale financial insti-
18 tution’ means a wholesale financial institution estab-
19 lished under section 5136B of the Revised Statutes
20 of the United States; and

21 “(4) the term ‘wholesale bank’ means a na-
22 tional wholesale financial institution, a wholesale fi-
23 nancial institution established under section 9B of
24 the Federal Reserve Act, or a corporation organized
25 under section 25A of the Federal Reserve Act.

1 **“§ 782. Selection of trustee**

2 “(a) Notwithstanding any other provision of this title,
3 the conservator or receiver who files the petition shall be
4 the trustee under this chapter, unless the Comptroller of
5 the Currency (in the case of a national wholesale financial
6 institution for which it appointed the conservator or re-
7 ceiver) or the Board (in the case of any wholesale bank
8 for which it appointed the conservator or receiver) des-
9 ignates an alternative trustee. The Comptroller of the Cur-
10 rency or the Board (as applicable) may designate a suc-
11 cessor trustee, if required.

12 “(b) Whenever the Comptroller of the Currency or
13 the Board appoints or designates a trustee, chapter 3 and
14 sections 704 and 705 of this title shall apply to the Comp-
15 troller or the Board, as applicable, in the same way and
16 to the same extent that they apply to a United States
17 trustee.

18 **“§ 783. Additional powers of trustee**

19 “(a) The trustee under this subchapter has power to
20 distribute property not of the estate, including distribu-
21 tions to customers that are mandated by subchapters III
22 and Iv of this chapter.

23 “(b) The trustee under this subchapter may, after no-
24 tice and a hearing—

25 “(1) sell the wholesale bank to a depository in-
26 stitution or consortium of depository institutions

1 (which consortium may agree on the allocation of
2 the wholesale bank among the consortium);

3 “(2) merge the wholesale bank with a deposi-
4 tory institution;

5 “(3) transfer contracts to the same extent as
6 could a receiver for a depository institution under
7 paragraphs (9) and (10) of section 11(e) of the Fed-
8 eral Deposit Insurance Act;

9 “(4) transfer assets or liabilities to a depository
10 institution;

11 “(5) transfer assets and liabilities to a bridge
12 bank as provided in paragraphs (1), (3)(A), (5), (6),
13 and (9) through (13), and subparagraphs (A)
14 through (H) and (K) of paragraph (4) of section
15 11(n) of the Federal Deposit Insurance Act, except
16 that—

17 “(A) the bridge bank shall be treated as a
18 wholesale bank for the purpose of this sub-
19 section; and

20 “(B) any references in any such provision
21 of law to the Federal Deposit Insurance Cor-
22 poration shall be construed to be references to
23 the appointing agency and that references to
24 deposit insurance shall be omitted.

1 “(c) Any reference in this section to transfers of li-
 2 abilities includes a ratable transfer of liabilities within a
 3 priority class.

4 **“§ 784. Right to be heard**

5 “The Comptroller of the Currency (in the case of a
 6 national wholesale financial institution), the Board (in the
 7 case of any wholesale bank), or a Federal Reserve bank
 8 (in the case of a wholesale bank that is a member of that
 9 bank) may raise and may appear and be heard on any
 10 issue in a case under this subchapter.

11 (C) CONFORMING AMENDMENT.—The
 12 table of sections for chapter 7 of title 11,
 13 United States Code, is amended by adding at
 14 the end the following:

“SUBCHAPTER V—WHOLESALE BANK LIQUIDATION

“781. Definitions for subchapter.

“782. Selection of trustee.

“783. Additional powers of trustee.

“784. Right to be heard.”.

15 (e) RESOLUTION OF EDGE CORPORATIONS.—The
 16 sixteenth undesignated paragraph of section 25A of the
 17 Federal Reserve Act (12 U.S.C. 624) is amended to read
 18 as follows:

19 “(16) APPOINTMENT OF RECEIVER OR CONSER-
 20 VATOR.—

21 “(A) IN GENERAL.—The Board may ap-
 22 point a conservator or receiver for a corporation

1 organized under the provisions of this section to
2 the same extent and in the same manner as the
3 Comptroller of the Currency may appoint a con-
4 servator or receiver for a national bank, and the
5 conservator or receiver for such corporation
6 shall exercise the same powers, functions, and
7 duties, subject to the same limitations, as a
8 conservator or receiver for a national bank.

9 “(B) EQUIVALENT AUTHORITY.—The
10 Board shall have the same authority with re-
11 spect to any conservator or receiver appointed
12 for a corporation organized under the provisions
13 of this section under this paragraph and any
14 such corporation as the Comptroller of the Cur-
15 rency has with respect to a conservator or re-
16 ceiver of a national bank and the national bank
17 for which a conservator or receiver has been ap-
18 pointed.

19 “(C) TITLE 11 PETITIONS.—The Board
20 may direct the conservator or receiver of a cor-
21 poration organized under the provisions of this
22 section to file a petition pursuant to title 11,
23 United States Code, in which case, title 11,
24 United States Code, shall apply to the corpora-

1 tion in lieu of otherwise applicable Federal or
 2 State insolvency law.”.

3 **Subtitle E—Preservation of FTC**
 4 **Authority**

5 **SEC. 141. AMENDMENT TO THE BANK HOLDING COMPANY**
 6 **ACT OF 1956 TO MODIFY NOTIFICATION AND**
 7 **POST-APPROVAL WAITING PERIOD FOR SEC-**
 8 **TION 3 TRANSACTIONS.**

9 Section 11(b)(1) of the Bank Holding Company Act
 10 of 1956 (12 U.S.C. 1849(b)(1)) is amended by inserting
 11 “and, if the transaction also involves an acquisition under
 12 section 4 or section 6, the Board shall also notify the Fed-
 13 eral Trade Commission of such approval” before the pe-
 14 riod at the end of the first sentence.

15 **SEC. 142. INTERAGENCY DATA SHARING.**

16 To the extent not prohibited by other law, the Comp-
 17 troller of the Currency, the Director of the Office of Thrift
 18 Supervision, the Federal Deposit Insurance Corporation,
 19 and the Board of Governors of the Federal Reserve Sys-
 20 tem shall make available to the Attorney General and the
 21 Federal Trade Commission any data in the possession of
 22 any such banking agency that the antitrust agency deems
 23 necessary for antitrust review of any transaction requiring
 24 notice to any such antitrust agency or the approval of such
 25 agency under section 3, 4, or 6 of the Bank Holding Com-

pany Act of 1956, section 18(c) of the Federal Deposit Insurance Act, the National Bank Consolidation and Merger Act, section 10 of the Home Owners' Loan Act, or the antitrust laws.

**SEC. 143. CLARIFICATION OF STATUS OF SUBSIDIARIES
AND AFFILIATES.**

(a) CLARIFICATION OF FEDERAL TRADE COMMISSION JURISDICTION.—Any person which directly or indirectly controls, is controlled directly or indirectly by, or is directly or indirectly under common control with, any bank or savings association (as such terms are defined in section 3 of the Federal Deposit Insurance Act) and is not itself a bank or savings association shall not be deemed to be a bank or savings association for purposes of the Federal Trade Commission Act or any other law enforced by the Federal Trade Commission.

(b) SAVINGS PROVISION.—No provision of this section shall be construed as restricting the authority of any Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) under any Federal banking law, including section 8 of the Federal Deposit Insurance Act.

(c) HART—SCOTT—RODINO AMENDMENTS.—

(1) BANKS.—Section 7A(c)(7) of the Clayton Act (15 U.S.C. 18a(c)(7)) is amended by inserting

1 before the semicolon at the end the following: “, ex-
2 cept that a portion of a transaction is not exempt
3 under this paragraph if such portion of the trans-
4 action (A) is subject to section 6 of the Bank Hold-
5 ing Company Act of 1956; and (B) does not require
6 agency approval under section 3 of the Bank Hold-
7 ing Company Act of 1956”.

8 (2) BANK HOLDING COMPANIES.—Section
9 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)) is
10 amended by inserting before the semicolon at the
11 end the following: “, except that a portion of a
12 transaction is not exempt under this paragraph if
13 such portion of the transaction (A) is subject to sec-
14 tion 6 of the Bank Holding Company Act of 1956;
15 and (B) does not require agency approval under sec-
16 tion 4 of the Bank Holding Company Act of 1956”.

17 **SEC. 144. ANNUAL GAO REPORT.**

18 (a) IN GENERAL.—By the end of the 1-year period
19 beginning on the date of the enactment of this Act and
20 annually thereafter, the Comptroller General of the United
21 States shall submit a report to the Congress on market
22 concentration in the financial services industry and its im-
23 pact on consumers.

24 (b) ANALYSIS.—Each report submitted under sub-
25 section (a) shall contain an analysis of—

1 (1) the positive and negative effects of affili-
2 ations between various types of financial companies,
3 and of acquisitions pursuant to this Act and the
4 amendments made by this Act to other provisions of
5 law, including any positive or negative effects on
6 consumers, area markets, and submarkets thereof or
7 on registered securities brokers and dealers which
8 have been purchased by depository institutions or
9 depository institution holding companies;

10 (2) the changes in business practices and the
11 effects of any such changes on the availability of
12 venture capital, consumer credit, and other financial
13 services or products and the availability of capital
14 and credit for small businesses; and

15 (3) the acquisition patterns among depository
16 institutions, depository institution holding compa-
17 nies, securities firms, and insurance companies in-
18 cluding acquisitions among the largest 20 percent of
19 firms and acquisitions within regions or other lim-
20 ited geographical areas.

21 (c) SUNSET.—This section shall not apply after the
22 end of the 5-year period beginning on the date of the en-
23 actment of this Act.

1 **Subtitle F—National Treatment**

2 **SEC. 151. FOREIGN BANKS THAT ARE FINANCIAL HOLDING**
3 **COMPANIES.**

4 Section 8(c) of the International Banking Act of
5 1978 (12 U.S.C. 3106(c)) is amended by adding at the
6 end the following new paragraph:

7 “(3) TERMINATION OF GRANDFATHERED
8 RIGHTS.—

9 “(A) IN GENERAL.—If any foreign bank or
10 foreign company files a declaration under sec-
11 tion 6(b)(1)(D) or receives a determination
12 under section 10(d)(1) of the Bank Holding
13 Company Act of 1956, any authority conferred
14 by this subsection on any foreign bank or com-
15 pany to engage in any activity which the Board
16 has determined to be permissible for financial
17 holding companies under section 6 of such Act
18 shall terminate immediately.

19 “(B) RESTRICTIONS AND REQUIREMENTS
20 AUTHORIZED.—If a foreign bank or company
21 that engages, directly or through an affiliate
22 pursuant to paragraph (1), in an activity which
23 the Board has determined to be permissible for
24 financial holding companies under section 6 of
25 the Bank Holding Company Act of 1956 has

1 not filed a declaration with the Board of its sta-
 2 tus as a financial holding company under such
 3 section or received a determination under sec-
 4 tion 10(d)(1) by the end of the 2-year period
 5 beginning on the date of the enactment of the
 6 Financial Services Act of 1999, the Board, giv-
 7 ing due regard to the principle of national
 8 treatment and equality of competitive oppor-
 9 tunity, may impose such restrictions and re-
 10 quirements on the conduct of such activities by
 11 such foreign bank or company as are com-
 12 parable to those imposed on a financial holding
 13 company organized under the laws of the
 14 United States, including a requirement to con-
 15 duct such activities in compliance with any pru-
 16 dential safeguards established under section
 17 114 of the Financial Services Act.”.

18 **SEC. 152. FOREIGN BANKS AND FOREIGN FINANCIAL INSTI-**
 19 **TUTIONS THAT ARE WHOLESALE FINANCIAL**
 20 **INSTITUTIONS.**

21 Section 8A of the Federal Deposit Insurance Act (as
 22 added by section 136(c)(2) of this Act) is amended by add-
 23 ing at the end the following new subsection:

24 “(i) **VOLUNTARY TERMINATION OF DEPOSIT INSUR-**
 25 **ANCE.**—The provisions on voluntary termination of insur-

1 ance in this section shall apply to an insured branch of
 2 a foreign bank (including a Federal branch) in the same
 3 manner and to the same extent as they apply to an insured
 4 State bank or a national bank.”.

5 **SEC. 153. REPRESENTATIVE OFFICES.**

6 (a) DEFINITION OF “REPRESENTATIVE OFFICE”.—
 7 Section 1(b)(15) of the International Banking Act of 1978
 8 (12 U.S.C. 3101(15)) is amended by striking “State agen-
 9 cy, or subsidiary of a foreign bank” and inserting “or
 10 State agency”.

11 (b) EXAMINATIONS.—Section 10(c) of the Inter-
 12 national Banking Act of 1978 (12 U.S.C. 3107(c)) is
 13 amended by adding at the end the following: “The Board
 14 may also make examinations of any affiliate of a foreign
 15 bank conducting business in any State if the Board deems
 16 it necessary to determine and enforce compliance with this
 17 Act, the Bank Holding Company Act of 1956 (12 U.S.C.
 18 1841 et seq.), or other applicable Federal banking law.”.

19 **SEC. 154. RECIPROCITY.**

20 (a) NATIONAL TREATMENT REPORTS.—

21 (1) REPORT REQUIRED IN THE EVENT OF CER-
 22 TAIN ACQUISITIONS.—

23 (A) IN GENERAL.—Whenever a person
 24 from a foreign country announces its intention
 25 to acquire or acquires a bank, a securities un-

1 derwriter, broker, or dealer, an investment ad-
2 viser, or insurance company that ranks within
3 the top 50 firms in that line of business in the
4 United States, the Secretary of Commerce, in
5 the case of an insurance company, or the Sec-
6 retary of the Treasury, in the case of a bank,
7 a securities underwriter, broker, or dealer, or
8 an investment adviser, shall, within the earlier
9 of 6 months of such announcement or such ac-
10 quisition and in consultation with other appro-
11 priate Federal and State agencies, prepare and
12 submit to the Congress a report on whether a
13 United States person would be able, de facto or
14 de jure, to acquire an equivalent sized firm in
15 the country in which such person from a foreign
16 country is located.

17 (B) ANALYSIS AND RECOMMENDATIONS.—

18 If a report submitted under subparagraph (A)
19 states that the equivalent treatment referred to
20 in such subparagraph, de facto and de jure, is
21 not provided in the country which is the subject
22 of the report, the Secretary of Commerce or the
23 Secretary of the Treasury, as the case may be
24 and in consultation with other appropriate Fed-
25 eral and State agencies, shall include in the re-

1 port analysis and recommendations as to how
2 that country's laws and regulations would need
3 to be changed so that reciprocal treatment
4 would exist.

5 (2) REPORT REQUIRED BEFORE FINANCIAL
6 SERVICES NEGOTIATIONS COMMENCE.—The Sec-
7 retary of Commerce, with respect to insurance com-
8 panies, and the Secretary of the Treasury, with re-
9 spect to banks, securities underwriters, brokers,
10 dealers, and investment advisers, shall, not less than
11 6 months before the commencement of the financial
12 services negotiations of the World Trade Organiza-
13 tion and in consultation with other appropriate Fed-
14 eral and State agencies, prepare and submit to the
15 Congress a report containing—

16 (A) an assessment of the 30 largest finan-
17 cial services markets with regard to whether re-
18 ciprocal access is available in such markets to
19 United States financial services providers; and

20 (B) with respect to any such financial serv-
21 ices markets in which reciprocal access is not
22 available to United States financial services
23 providers, an analysis and recommendations as
24 to what legislative, regulatory, or enforcement

1 changes would be required to ensure full reci-
2 procity for such providers.

3 (3) PERSON OF A FOREIGN COUNTRY DE-
4 FINED.—For purposes of this subsection, the term
5 “person of a foreign country” means a person, or a
6 person which directly or indirectly owns or controls
7 that person, that is a resident of that country, is or-
8 ganized under the laws of that country, or has its
9 principal place of business in that country.

10 (b) PROVISIONS APPLICABLE TO SUBMISSIONS.—

11 (1) NOTICE.—Before preparing any report re-
12 quired under subsection (a), the Secretary of Com-
13 merce or the Secretary of the Treasury, as the case
14 may be, shall publish notice that a report is in prep-
15 aration and seek comment from United States per-
16 sons.

17 (2) PRIVILEGED SUBMISSIONS.—Upon the re-
18 quest of the submitting person, any comments or re-
19 lated communications received by the Secretary of
20 Commerce or the Secretary of the Treasury, as the
21 case may be, with regard to the report shall, for the
22 purposes of section 552 of title 5, of the United
23 States Code, be treated as commercial information
24 obtained from a person that is privileged or con-
25 fidential, regardless of the medium in which the in-

1 formation is obtained. This confidential information
 2 shall be the property of the Secretary and shall be
 3 privileged from disclosure to any other person. How-
 4 ever, this privilege shall not be construed as pre-
 5 venting access to that confidential information by
 6 the Congress.

7 (3) PROHIBITION OF UNAUTHORIZED DISCLO-
 8 SURES.—No person in possession of confidential in-
 9 formation, provided under this section may disclose
 10 that information, in whole or in part, except for dis-
 11 closure made in published statistical material that
 12 does not disclose, either directly or when used in
 13 conjunction with publicly available information, the
 14 confidential information of any person.

15 **Subtitle G—Federal Home Loan** 16 **Bank System Modernization**

17 **SEC. 161. SHORT TITLE.**

18 This subtitle may be cited as the “Federal Home
 19 Loan Bank System Modernization Act of 1999”.

20 **SEC. 162. DEFINITIONS.**

21 Section 2 of the Federal Home Loan Bank Act (12
 22 U.S.C. 1422) is amended—

23 (1) in paragraph (1), by striking “term ‘Board’
 24 means” and inserting “terms ‘Finance Board’ and
 25 ‘Board’ mean”;

1 (2) by striking paragraph (3) and inserting the
2 following:

3 “(3) STATE.—The term ‘State’, in addition to
4 the States of the United States, includes the District
5 of Columbia, Guam, Puerto Rico, the United States
6 Virgin Islands, American Samoa, and the Common-
7 wealth of the Northern Mariana Islands.”; and

8 (3) by adding at the end the following new
9 paragraph:

10 “(13) COMMUNITY FINANCIAL INSTITUTION.—

11 “(A) IN GENERAL.—The term ‘community
12 financial institution’ means a member—

13 “(i) the deposits of which are insured
14 under the Federal Deposit Insurance Act;
15 and

16 “(ii) that has, as of the date of the
17 transaction at issue, less than
18 \$500,000,000 in average total assets,
19 based on an average of total assets over
20 the 3 years preceding that date.

21 “(B) ADJUSTMENTS.—The \$500,000,000
22 limit referred to in subparagraph (A)(ii) shall
23 be adjusted annually by the Finance Board,
24 based on the annual percentage increase, if any,
25 in the Consumer Price Index for all urban con-

1 sumers, as published by the Department of
2 Labor.”.

3 **SEC. 163. SAVINGS ASSOCIATION MEMBERSHIP.**

4 Section 5(f) of the Home Owners’ Loan Act (12
5 U.S.C. 1464(f)) is amended to read as follows:

6 “(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—
7 On and after January 1, 1999, a Federal savings associa-
8 tion may become a member of the Federal Home Loan
9 Bank System, and shall qualify for such membership in
10 the manner provided by the Federal Home Loan Bank
11 Act.”.

12 **SEC. 164. ADVANCES TO MEMBERS; COLLATERAL.**

13 (a) IN GENERAL.—Section 10(a) of the Federal
14 Home Loan Bank Act (12 U.S.C. 1430(a)) is amended—

15 (1) by redesignating paragraphs (1) through
16 (4) as subparagraphs (A) through (D), respectively,
17 and indenting appropriately;

18 (2) by striking “(a) Each” and inserting the
19 following:

20 “(a) IN GENERAL.—

21 “(1) ALL ADVANCES.—Each”;

22 (3) by striking the second sentence and insert-
23 ing the following:

24 “(2) PURPOSES OF ADVANCES.—A long-term
25 advance may only be made for the purposes of—

1 “(A) providing funds to any member for
2 residential housing finance; and

3 “(B) providing funds to any community fi-
4 nancial institution for small business, agricul-
5 tural, rural development, or low-income commu-
6 nity development lending.”;

7 (4) by striking “A Bank” and inserting the fol-
8 lowing:

9 “(3) COLLATERAL.—A Bank”;

10 (5) in paragraph (3) (as so designated by para-
11 graph (4) of this subsection)—

12 (A) in subparagraph (C) (as so redesign-
13 ated by paragraph (1) of this subsection) by
14 striking “Deposits” and inserting “Cash or de-
15 posits”;

16 (B) in subparagraph (D) (as so redesign-
17 ated by paragraph (1) of this subsection), by
18 striking the second sentence; and

19 (C) by inserting after subparagraph (D)
20 (as so redesignated by paragraph (1) of this
21 subsection) the following new subparagraph:

22 “(E) Secured loans for small business, ag-
23 riculture, rural development, or low-income
24 community development, or securities rep-
25 resenting a whole interest in such secured

1 loans, in the case of any community financial
2 institution.”;

3 (6) in paragraph (5)—

4 (A) in the second sentence, by striking
5 “and the Board”;

6 (B) in the third sentence, by striking
7 “Board” and inserting “Federal home loan
8 bank”; and

9 (C) by striking “(5) Paragraphs (1)
10 through (4)” and inserting the following:

11 “(4) ADDITIONAL BANK AUTHORITY.—Subpara-
12 graphs (A) through (E) of paragraph (3)”;

13 (7) by adding at the end the following:

14 “(5) REVIEW OF CERTAIN COLLATERAL STAND-
15 ARDS.—The Board may review the collateral stand-
16 ards applicable to each Federal home loan bank for
17 the classes of collateral described in subparagraphs
18 (D) and (E) of paragraph (3), and may, if necessary
19 for safety and soundness purposes, require an in-
20 crease in the collateral standards for any or all of
21 those classes of collateral.

22 “(6) DEFINITIONS.—For purposes of this sub-
23 section, the terms ‘small business’, ‘agriculture’,
24 ‘rural development’, and ‘low-income community de-

1 velopment’ shall have the meanings given those
2 terms by rule or regulation of the Finance Board.”.

3 (b) CLERICAL AMENDMENT.—The section heading
4 for section 10 of the Federal Home Loan Bank Act (12
5 U.S.C. 1430) is amended to read as follows:

6 **“SEC. 10. ADVANCES TO MEMBERS.”.**

7 (c) CONFORMING AMENDMENTS RELATING TO MEM-
8 BERS WHICH ARE NOT QUALIFIED THRIFT LENDERS—
9 The first of the 2 subsections designated as subsection (e)
10 of section 10 of the Federal Home Loan Bank Act (12
11 U.S.C. 1430(e)(1)) is amended—

12 (1) in the last sentence of paragraph (1), by in-
13 serting “or, in the case of any community financial
14 institution, for the purposes described in subsection
15 (a)(2)” before the period; and

16 (2) in paragraph (5)(C), by inserting “except
17 that, in determining the actual thrift investment per-
18 centage of any community financial institution for
19 purposes of this subsection, the total investment of
20 such member in loans for small business, agri-
21 culture, rural development, or low-income commu-
22 nity development, or securities representing a whole
23 interest in such loans, shall be treated as a qualified
24 thrift investment (as defined in such section 10(m))”
25 before the period.

1 **SEC. 165. ELIGIBILITY CRITERIA.**

2 Section 4(a) of the Federal Home Loan Bank Act
3 (12 U.S.C. 1424(a)) is amended—

4 (1) in paragraph (2)(A), by inserting, “(other
5 than a community financial institution)” after “in-
6 stitution”; and

7 (2) by adding at the end the following new
8 paragraph:

9 “(3) LIMITED EXEMPTION FOR COMMUNITY FI-
10 NANCIAL INSTITUTIONS.—A community financial in-
11 stitution that otherwise meets the requirements of
12 paragraph (2) may become a member without regard
13 to the percentage of its total assets that is rep-
14 resented by residential mortgage loans, as described
15 in subparagraph (A) of paragraph (2).”.

16 **SEC. 166. MANAGEMENT OF BANKS.**

17 (a) BOARD OF DIRECTORS.—Section 7(d) of the Fed-
18 eral Home Loan Bank Act (12 U.S.C. 1427(d)) is
19 amended—

20 (1) by striking “(d) The term” and inserting
21 the following:

22 “(d) TERMS OF OFFICE.—The term”; and

23 (2) by striking “shall be two years”.

24 (b) COMPENSATION.—Section 7(i) of the Federal
25 Home Loan Bank Act (12 U.S.C. 1427(i)) is amended by
26 striking “, subject to the approval of the board”.

1 (c) REPEAL OF SECTIONS 22A AND 27.—The Fed-
2 eral Home Loan Bank Act (12 U.S.C. 1421 et seq.) is
3 amended by striking sections 22A (12 U.S.C. 1442a) and
4 27 (12 U.S.C. 1447).

5 (d) SECTION 12.—Section 12 of the Federal Home
6 Loan Bank Act (12 U.S.C. 1432) is amended—

7 (1) in subsection (a)—

8 (A) by striking “, but, except” and all that
9 follows through “ten years”;

10 (B) by striking “subject to the approval of
11 the Board” the first place that term appears;

12 (C) by striking “and, by its Board of direc-
13 tors,” and all that follows through “agent of
14 such bank,” and inserting “and, by the board
15 of directors of the bank, to prescribe, amend,
16 and repeal by-laws governing the manner in
17 which its affairs may be administered, con-
18 sistent with applicable laws and regulations, as
19 administered by the Finance Board. No officer,
20 employee, attorney, or agent of a Federal home
21 loan bank”; and

22 (D) by striking “Board of directors” where
23 such term appears in the penultimate sentence
24 and inserting “board of directors”; and

1 (2) in subsection (b), by striking “loans banks”
2 and inserting “loan banks”.

3 (e) POWERS AND DUTIES OF FEDERAL HOUSING FI-
4 NANCE BOARD.—

5 (1) ISSUANCE OF NOTICES OF VIOLATIONS.—

6 Section 2B(a) of the Federal Home Loan Bank Act
7 (12 U.S.C. 1422b(a)) is amended by adding at the
8 end the following new paragraphs:

9 “(5) To issue and serve a notice of charges
10 upon a Federal home loan bank or upon any execu-
11 tive officer or director of a Federal home loan bank
12 if, in the determination of the Finance Board, the
13 bank, executive officer, or director is engaging or
14 has engaged in, or the Finance Board has reason-
15 able cause to believe that the bank, executive officer,
16 or director is about to engage in, any conduct that
17 violates any provision of this Act or any law, order,
18 rule, or regulation or any condition imposed in writ-
19 ing by the Finance Board in connection with the
20 granting of any application or other request by the
21 bank, or any written agreement entered into by the
22 bank with the agency, in accordance with the proce-
23 dures provided in section 1371(c) of the Federal
24 Housing Enterprises Financial Safety and Sound-
25 ness Act of 1992. Such authority includes the same

1 authority to take affirmative action to correct condi-
2 tions resulting from violations or practices or to
3 limit activities of a bank or any executive officer or
4 director of a bank as appropriate Federal banking
5 agencies have to take with respect to insured deposi-
6 tory institutions under paragraphs (6) and (7) of
7 section 8(b) of the Federal Deposit Insurance Act,
8 and to have all other powers, rights, and duties to
9 enforce this Act with respect to the Federal home
10 loan banks and their executive officers and directors
11 as the Office of Federal Housing Enterprise Over-
12 sight has to enforce the Federal Housing Enter-
13 prises Financial Safety and Soundness Act of 1992,
14 the Federal National Mortgage Association Charter
15 Act, or the Federal Home Loan Mortgage Corpora-
16 tion Act with respect to the Federal housing enter-
17 prises under the Federal Housing Enterprises Fi-
18 nancial Safety and Soundness Act of 1992.

19 “(6) To address any insufficiencies in capital
20 levels resulting from the application of section 5(f)
21 of the Home Owners’ Loan Act.

22 “(7) To sue and be sued, by and through its
23 own attorneys.”.

24 (2) TECHNICAL AMENDMENT.—Section 111 of
25 Public Law 93–495 (12 U.S.C. 250) is amended by

1 striking “Federal Home Loan Bank Board,” and in-
2 serting “Director of the Office of Thrift Supervision,
3 “the Federal Housing Finance Board,”.

4 (f) ELIGIBILITY TO SECURE ADVANCES.—

5 (1) SECTION 9.—Section 9 of the Federal
6 Home Loan Bank Act (12 U.S.C. 1429) is
7 amended—

8 (A) in the second sentence, by striking
9 “with the approval of the Board”; and

10 (B) in the third sentence, by striking “,
11 subject to the approval of the Board,”.

12 (2) SECTION 10.—Section 10 of the Federal
13 Home Loan Bank Act (12 U.S.C. 1430) is
14 amended—

15 (A) in subsection (c)—

16 (i) in the first sentence, by striking
17 “Board” and inserting “Federal home loan
18 bank”; and

19 (ii) by striking the second sentence;

20 (B) in subsection (d)—

21 (i) in the first sentence, by striking
22 “and the approval of the Board”; and

23 (ii) by striking “Subject to the ap-
24 proval of the Board, any” and inserting
25 “Any”; and

1 (C) in subsection (j)(1)—

2 (i) by striking “to subsidize the inter-
3 est rate on advances” and inserting “to
4 provide subsidies, including subsidized in-
5 terest rates on advances”;

6 (ii) by striking “Pursuant” and in-
7 serting the following:

8 “(A) ESTABLISHMENT.—Pursuant”; and

9 (iii) by adding at the end the fol-
10 lowing new subparagraph:

11 “(B) NONDELEGATION OF APPROVAL AU-
12 THORITY.—Subject to such regulations as the
13 Finance Board may prescribe, the board of di-
14 rectors of each Federal home loan bank may
15 approve or disapprove requests from members
16 for Affordable Housing Program subsidies, and
17 may not delegate such authority.”.

18 (g) SECTION 16.—Section 16(a) of the Federal Home
19 Loan Bank Act (12 U.S.C. 1436(a)) is amended—

20 (1) in the third sentence—

21 (A) by striking “net earnings” and insert-
22 ing “previously retained earnings or current net
23 earnings”; and

1 (B) by striking “, and then only with the
2 approval of the Federal Housing Finance
3 Board”; and
4 (2) by striking the fourth sentence.

5 (h) SECTION 18.—Section 18(b) of the Federal Home
6 Loan Bank Act (12 U.S.C. 1438(b)) is amended by strik-
7 ing paragraph (4).

8 **SEC. 167. RESOLUTION FUNDING CORPORATION.**

9 (a) IN GENERAL.—Section 21B(f)(2)(C) of the Fed-
10 eral Home Loan Bank Act (12 U.S.C. 1441b(f)(2)(C)) is
11 amended to read as follows:

12 “(C) PAYMENTS BY FEDERAL HOME LOAN
13 BANKS.—

14 “(i) IN GENERAL.—To the extent that
15 the amounts available pursuant to sub-
16 paragraphs (A) and (B) are insufficient to
17 cover the amount of interest payments,
18 each Federal home loan bank shall pay to
19 the Funding Corporation in each calendar
20 year, 20.75 percent of the net earnings of
21 that bank (after deducting expenses relat-
22 ing to section 10(j) and operating ex-
23 penses).

24 “(ii) ANNUAL DETERMINATION.—The
25 Board annually shall determine the extent

1 to which the value of the aggregate
2 amounts paid by the Federal home loan
3 banks exceeds or falls short of the value of
4 an annuity of \$300,000,000 per year that
5 commences on the issuance date and ends
6 on the final scheduled maturity date of the
7 obligations, and shall select appropriate
8 present value factors for making such de-
9 terminations.

10 “(iii) PAYMENT TERM ALTER-
11 ATIONS.—The Board shall extend or short-
12 en the term of the payment obligations of
13 a Federal home loan bank under this sub-
14 paragraph as necessary to ensure that the
15 value of all payments made by the banks
16 is equivalent to the value of an annuity re-
17 ferred to in clause (ii).

18 “(iv) TERM BEYOND MATURITY.—If
19 the Board extends the term of payments
20 beyond the final scheduled maturity date
21 for the obligations, each Federal home loan
22 bank shall continue to pay 20.75 percent
23 of its net earnings (after deducting ex-
24 penses relating to section 10(j) and oper-
25 ating expenses) to the Treasury of the

1 United States until the value of all such
2 payments by the Federal home loan banks
3 is equivalent to the value of an annuity re-
4 ferred to in clause (ii). In the final year in
5 which the Federal home loan banks are re-
6 quired to make any payment to the Treas-
7 ury under this subparagraph, if the dollar
8 amount represented by 20.75 percent of
9 the net earnings of the Federal home loan
10 banks exceeds the remaining obligation of
11 the banks to the Treasury, the Finance
12 Board shall reduce the percentage pro rata
13 to a level sufficient to pay the remaining
14 obligation.”.

15 (b) EFFECTIVE DATE.—The amendment made by
16 subsection (a) shall become effective on January 1, 1999.
17 Payments made by a Federal home loan bank before that
18 effective date shall be counted toward the total obligation
19 of that bank under section 21B(f)(2)(C) of the Federal
20 Home Loan Bank Act, as amended by this section.

21 **SEC. 168. CAPITAL STRUCTURE OF FEDERAL HOME LOAN**
22 **BANKS.**

23 Section 6 of the Federal Home Loan Bank Act (12
24 U.S.C. 1426) is amended to read as follows:

1 **“SEC. 6. CAPITAL STRUCTURE OF FEDERAL HOME LOAN**
2 **BANKS.**

3 “(a) REGULATIONS.—

4 “(1) CAPITAL STANDARDS.—Not later than 1
5 year after the date of the enactment of the Financial
6 Services Act of 1999, the Finance Board shall issue
7 regulations prescribing uniform capital standards
8 applicable to each Federal home loan bank, which
9 shall require each such bank to meet—

10 “(A) the leverage requirement specified in
11 paragraph (2); and

12 “(B) the risk-based capital requirements,
13 in accordance with paragraph (3).

14 “(2) LEVERAGE REQUIREMENT.—

15 “(A) IN GENERAL.—The leverage require-
16 ment shall require each Federal home loan
17 bank to maintain a minimum amount of total
18 capital based on the aggregate on-balance sheet
19 assets of the bank and shall be 5 percent.

20 “(B) TREATMENT OF STOCK AND RE-
21 TAINED EARNINGS.—In determining compliance
22 with the minimum leverage ratio established
23 under subparagraph (A), the paid-in value of
24 the outstanding Class B stock shall be multi-
25 plied by 1.5, the paid-in value of the out-
26 standing Class C stock and the amount of re-

1 tained earnings shall be multiplied by 2.0, and
2 such higher amounts shall be deemed to be cap-
3 ital for purposes of meeting the 5 percent min-
4 imum leverage ratio.

5 “(3) RISK-BASED CAPITAL STANDARDS.—

6 “(A) IN GENERAL.—Each Federal home
7 loan bank shall maintain permanent capital in
8 an amount that is sufficient, as determined in
9 accordance with the regulations of the Finance
10 Board, to meet—

11 “(i) the credit risk to which the Fed-
12 eral home loan bank is subject; and

13 “(ii) the market risk, including inter-
14 est rate risk, to which the Federal home
15 loan bank is subject, based on a stress test
16 established by the Finance Board that rig-
17 orously tests for changes in market vari-
18 ables, including changes in interest rates,
19 rate volatility, and changes in the shape of
20 the yield curve.

21 “(B) CONSIDERATION OF OTHER RISK-
22 BASED STANDARDS.—In establishing the risk-
23 based standard under subparagraph (A)(ii), the
24 Finance Board shall take due consideration of
25 any risk-based capital test established pursuant

1 to section 1361 of the Federal Housing Enter-
2 prises Financial Safety and Soundness Act of
3 1992 (12 U.S.C. 4611) for the enterprises (as
4 defined in that Act), with such modifications as
5 the Finance Board determines to be appro-
6 priate to reflect differences in operations be-
7 tween the Federal home loan banks and those
8 enterprises.

9 “(4) OTHER REGULATORY REQUIREMENTS.—

10 The regulations issued by the Finance Board under
11 paragraph (1) shall—

12 “(A) permit each Federal home loan bank
13 to issue, with such rights, terms, and pref-
14 erences, not inconsistent with this Act and the
15 regulations issued hereunder, as the board of
16 directors of that bank may approve, any one or
17 more of—

18 “(i) Class A stock, which shall be re-
19 deemable in cash and at par 6 months fol-
20 lowing submission by a member of a writ-
21 ten notice of its intent to redeem such
22 shares;

23 “(ii) Class B stock, which shall be re-
24 deemable in cash and at par 5 years fol-
25 lowing submission by a member of a writ-

1 ten notice of its intent to redeem such
2 shares; and

3 “(iii) Class C stock, which shall be
4 nonredeemable;

5 “(B) provide that the stock of a Federal
6 home loan bank may be issued to and held by
7 only members of the bank, and that a bank
8 may not issue any stock other than as provided
9 in this section;

10 “(C) prescribe the manner in which stock
11 of a Federal home loan bank may be sold,
12 transferred, redeemed, or repurchased; and

13 “(D) provide the manner of disposition of
14 outstanding stock held by, and the liquidation
15 of any claims of the Federal home loan bank
16 against, an institution that ceases to be a mem-
17 ber of the bank, through merger or otherwise,
18 or that provides notice of intention to withdraw
19 from membership in the bank.

20 “(5) DEFINITIONS OF CAPITAL.—For purposes
21 of determining compliance with the capital standards
22 established under this subsection—

23 “(A) permanent capital of a Federal home
24 loan bank shall include (as determined in ac-

1 cordance with generally accepted accounting
2 principles)—

3 “(i) the amounts paid for the Class C
4 stock and any other nonredeemable stock
5 approved by the Finance Board;

6 “(ii) the amounts paid for the Class B
7 stock, in an amount not to exceed 1 per-
8 cent of the total assets of the bank; and

9 “(iii) the retained earnings of the
10 bank; and

11 “(B) total capital of a Federal home loan
12 bank shall include—

13 “(i) permanent capital;

14 “(ii) the amounts paid for the Class A
15 stock, Class B stock (excluding any
16 amount treated as permanent capital
17 under subparagraph (5)(A)(ii)), or any
18 other class of redeemable stock approved
19 by the Finance Board;

20 “(iii) consistent with generally accept-
21 ed accounting principles, and subject to the
22 regulation of the Finance Board, a general
23 allowance for losses, which may not include
24 any reserves or allowances made or held
25 against specific assets; and

1 “(iv) any other amounts from sources
2 available to absorb losses incurred by the
3 bank that the Finance Board determines
4 by regulation to be appropriate to include
5 in determining total capital.

6 “(6) TRANSITION PERIOD.—Notwithstanding
7 any other provisions of this Act, the requirements
8 relating to purchase and retention of capital stock of
9 a Federal home loan bank by any member thereof in
10 effect on the day before the date of the enactment
11 of the Federal Home Loan Bank System Moderniza-
12 tion Act of 1999, shall continue in effect with re-
13 spect to each Federal home loan bank until the reg-
14 ulations required by this subsection have taken ef-
15 fect and the capital structure plan required by sub-
16 section (b) has been approved by the Finance Board
17 and implemented by such bank.

18 “(b) CAPITAL STRUCTURE PLAN.—

19 “(1) APPROVAL OF PLANS.—Not later than 270
20 days after the date of publication by the Finance
21 Board of final regulations in accordance with sub-
22 section (a), the board of directors of each Federal
23 home loan bank shall submit for Finance Board ap-
24 proval a plan establishing and implementing a cap-
25 ital structure for such bank that—

1 “(A) the board of directors determines is
2 best suited for the condition and operation of
3 the bank and the interests of the members of
4 the bank;

5 “(B) meets the requirements of subsection
6 (c); and

7 “(C) meets the minimum capital standards
8 and requirements established under subsection
9 (a) and other regulations prescribed by the Fi-
10 nance Board.

11 “(2) APPROVAL OF MODIFICATIONS.—The
12 board of directors of a Federal home loan bank shall
13 submit to the Finance Board for approval any modi-
14 fications that the bank proposes to make to an ap-
15 proved capital structure plan.

16 “(c) CONTENTS OF PLAN.—The capital structure
17 plan of each Federal home loan bank shall contain provi-
18 sions addressing each of the following:

19 “(1) MINIMUM INVESTMENT.—

20 “(A) IN GENERAL.—Each capital structure
21 plan of a Federal home loan bank shall require
22 each member of the bank to maintain a min-
23 imum investment in the stock of the bank, the
24 amount of which shall be determined in a man-
25 ner to be prescribed by the board of directors

1 of each bank and to be included as part of the
2 plan.

3 “(B) INVESTMENT ALTERNATIVES.—

4 “(i) IN GENERAL.—In establishing the
5 minimum investment required for each
6 member under subparagraph (A), a Fed-
7 eral home loan bank may, in its discretion,
8 include any one or more of the require-
9 ments referred to in clause (ii), or any
10 other provisions approved by the Finance
11 Board.

12 “(ii) AUTHORIZED REQUIREMENTS.—

13 A requirement is referred to in this clause
14 if it is a requirement for—

15 “(I) a stock purchase based on a
16 percentage of the total assets of a
17 member; or

18 “(II) a stock purchase based on a
19 percentage of the outstanding ad-
20 vances from the bank to the member.

21 “(C) MINIMUM AMOUNT.—Each capital
22 structure plan of a Federal home loan bank
23 shall require that the minimum stock invest-
24 ment established for members shall be set at a
25 level that is sufficient for the bank to meet the

1 minimum capital requirements established by
2 the Finance Board under subsection (a).

3 “(D) ADJUSTMENTS TO MINIMUM RE-
4 QUIRED INVESTMENT.—The capital structure
5 plan of each Federal home loan bank shall im-
6 pose a continuing obligation on the board of di-
7 rectors of the bank to review and adjust the
8 minimum investment required of each member
9 of that bank, as necessary to ensure that the
10 bank remains in compliance with applicable
11 minimum capital levels established by the Fi-
12 nance Board, and shall require each member to
13 comply promptly with any adjustments to the
14 required minimum investment.

15 “(2) TRANSITION RULE.—

16 “(A) IN GENERAL.—The capital structure
17 plan of each Federal home loan bank shall
18 specify the date on which it shall take effect,
19 and may provide for a transition period of not
20 longer than 3 years to allow the bank to come
21 into compliance with the capital requirements
22 prescribed under subsection (a), and to allow
23 any institution that was a member of the bank
24 on the date of the enactment of the Financial
25 Services Act of 1999, to come into compliance

1 with the minimum investment required pursu-
2 ant to the plan.

3 “(B) INTERIM PURCHASE REQUIRE-
4 MENTS.—The capital structure plan of a Fed-
5 eral home loan bank may allow any member re-
6 ferred to in subparagraph (A) that would be re-
7 quired by the terms of the capital structure
8 plan to increase its investment in the stock of
9 the bank to do so in periodic installments dur-
10 ing the transition period.

11 “(3) DISPOSITION OF SHARES.—The capital
12 structure plan of a Federal home loan bank shall
13 provide for the manner of disposition of any stock
14 held by a member of that bank that terminates its
15 membership or that provides notice of its intention
16 to withdraw from membership in that bank.

17 “(4) CLASSES OF STOCK.—

18 “(A) IN GENERAL.—The capital structure
19 plan of a Federal home loan bank shall afford
20 each member of that bank the option of main-
21 taining its required investment in the bank
22 through the purchase of any combination of
23 classes of stock authorized by the board of di-
24 rectors of the bank and approved by the Fi-
25 nance Board in accordance with its regulations.

1 “(B) RIGHTS REQUIREMENT.—A Federal
2 home loan bank shall include in its capital
3 structure plan provisions establishing terms,
4 rights, and preferences, including minimum in-
5 vestment, dividends, voting, and liquidation
6 preferences of each class of stock issued by the
7 bank, consistent with Finance Board regula-
8 tions and market requirements.

9 “(C) REDUCED MINIMUM INVESTMENT.—
10 The capital structure plan of a Federal home
11 loan bank may provide for a reduced minimum
12 stock investment for any member of that bank
13 that elects to purchase Class B, Class C, or any
14 other class of nonredeemable stock, in a manner
15 that is consistent with meeting the minimum
16 capital requirements of the bank, as established
17 by the Finance Board.

18 “(D) LIQUIDATION OF CLAIMS.—The cap-
19 ital structure plan of a Federal home loan bank
20 shall provide for the liquidation in an orderly
21 manner, as determined by the bank, of any
22 claim of that bank against a member, including
23 claims for any applicable prepayment fees or
24 penalties resulting from prepayment of ad-
25 vances prior to stated maturity.

1 “(5) LIMITED TRANSFERABILITY OF STOCK.—

2 The capital structure plan of a Federal home loan
3 bank shall—

4 “(A) provide that—

5 “(i) any stock issued by that bank
6 shall be available only to, held only by, and
7 tradable only among members of that bank
8 and between that bank and its members;
9 and

10 “(ii) a bank has no obligation to re-
11 purchase its outstanding Class C stock but
12 may do so, provided it is consistent with
13 Finance Board regulations and is at a
14 price that is mutually agreeable to the
15 bank and the member; and

16 “(B) establish standards, criteria, and re-
17 quirements for the issuance, purchase, transfer,
18 retirement, and redemption of stock issued by
19 that bank.

20 “(6) BANK REVIEW OF PLAN.—Before filing a
21 capital structure plan with the Finance Board, each
22 Federal home loan bank shall conduct a review of
23 the plan by—

24 “(A) an independent certified public ac-
25 countant, to ensure, to the extent possible, that

1 implementation of the plan would not result in
2 any write-down of the redeemable bank stock
3 investment of its members; and

4 “(B) at least one major credit rating agen-
5 cy, to determine, to the extent possible, whether
6 implementation of the plan would have any ma-
7 terial effect on the credit ratings of the bank.

8 “(d) TERMINATION OF MEMBERSHIP.—

9 “(1) VOLUNTARY WITHDRAWAL.—Any member
10 may withdraw from a Federal home loan bank by
11 providing written notice to the bank of its intent to
12 do so. The applicable stock redemption notice peri-
13 ods shall commence upon receipt of the notice by the
14 bank. Upon the expiration of the applicable notice
15 period for each class of redeemable stock, the mem-
16 ber may surrender such stock to the bank, and shall
17 be entitled to receive in cash the par value of the
18 stock. During the applicable notice periods, the
19 member shall be entitled to dividends and other
20 membership rights commensurate with continuing
21 stock ownership.

22 “(2) INVOLUNTARY WITHDRAWAL.—

23 “(A) IN GENERAL.—The board of directors
24 of a Federal home loan bank may terminate the

1 membership of any institution if, subject to Fi-
2 nance Board regulations, it determines that—

3 “(i) the member has failed to comply
4 with a provision of this Act or any regula-
5 tion prescribed under this Act; or

6 “(ii) the member has been determined
7 to be insolvent, or otherwise subject to the
8 appointment of a conservator, receiver, or
9 other legal custodian, by a State or Fed-
10 eral authority with regulatory and super-
11 visory responsibility for the member.

12 “(B) STOCK DISPOSITION.—An institution,
13 the membership of which is terminated in ac-
14 cordance with subparagraph (A)—

15 “(i) shall surrender redeemable stock
16 to the Federal home loan bank, and shall
17 receive in cash the par value of the stock,
18 upon the expiration of the applicable notice
19 period under subsection (a)(4)(A);

20 “(ii) shall receive any dividends de-
21 clared on its redeemable stock, during the
22 applicable notice period under subsection
23 (a)(4)(A); and

1 “(iii) shall not be entitled to any other
2 rights or privileges accorded to members
3 after the date of the termination.

4 “(C) COMMENCEMENT OF NOTICE PE-
5 RIOD.—With respect to an institution, the
6 membership of which is terminated in accord-
7 ance with subparagraph (A), the applicable no-
8 tice period under subsection (a)(4) for each
9 class of redeemable stock shall commence on
10 the earlier of—

11 “(i) the date of such termination; or

12 “(ii) the date on which the member
13 has provided notice of its intent to redeem
14 such stock.

15 “(3) LIQUIDATION OF INDEBTEDNESS.—Upon
16 the termination of the membership of an institution
17 for any reason, the outstanding indebtedness of the
18 member to the bank shall be liquidated in an orderly
19 manner, as determined by the bank and, upon the
20 extinguishment of all such indebtedness, the bank
21 shall return to the member all collateral pledged to
22 secure the indebtedness.

23 “(e) REDEMPTION OF EXCESS STOCK.—

24 “(1) IN GENERAL.—A Federal home loan bank,
25 in its sole discretion, may redeem or repurchase, as

1 appropriate, any shares of Class A or Class B stock
2 issued by the bank and held by a member that are
3 in excess of the minimum stock investment required
4 of that member.

5 “(2) EXCESS STOCK.—Shares of stock held by
6 a member shall not be deemed to be ‘excess stock’
7 for purposes of this subsection by virtue of a mem-
8 ber’s submission of a notice of intent to withdraw
9 from membership or termination of its membership
10 in any other manner.

11 “(3) PRIORITY.—A Federal home loan bank
12 may not redeem any excess Class B stock prior to
13 the end of the 5-year notice period, unless the mem-
14 ber has no Class A stock outstanding that could be
15 redeemed as excess.

16 “(f) IMPAIRMENT OF CAPITAL.—If the Finance
17 Board or the board of directors of a Federal home loan
18 bank determines that the bank has incurred or is likely
19 to incur losses that result in or are expected to result in
20 charges against the capital of the bank, the bank shall
21 not redeem or repurchase any stock of the bank without
22 the prior approval of the Finance Board while such
23 charges are continuing or are expected to continue. In no
24 case may a bank redeem or repurchase any applicable cap-

1 ital stock if, following the redemption, the bank would fail
2 to satisfy any minimum capital requirement.

3 “(g) REJOINING AFTER DIVESTITURE OF ALL
4 SHARES.—

5 “(1) IN GENERAL.—Except as provided in para-
6 graph (2), and notwithstanding any other provision
7 of this Act, an institution that divests all shares of
8 stock in a Federal home loan bank may not, after
9 such divestiture, acquire shares of any Federal home
10 loan bank before the end of the 5-year period begin-
11 ning on the date of the completion of such divesti-
12 ture, unless the divestiture is a consequence of a
13 transfer of membership on an uninterrupted basis
14 between banks.

15 “(2) EXCEPTION FOR WITHDRAWALS FROM
16 MEMBERSHIP BEFORE 1998.—Any institution that
17 withdrew from membership in any Federal home
18 loan bank before December 31, 1997, may acquire
19 shares of a Federal home loan bank at any time
20 after that date, subject to the approval of the Fi-
21 nance Board and the requirements of this Act.

22 “(h) TREATMENT OF RETAINED EARNINGS.—

23 “(1) IN GENERAL.—The holders of the Class C
24 stock of a Federal home loan bank, and any other
25 classes of nonredeemable stock approved by the Fi-

1 nance Board (to the extent provided in the terms
2 thereof), shall own the retained earnings, surplus,
3 undivided profits, and equity reserves, if any, of the
4 bank.

5 “(2) NO NONREDEEMABLE CLASSES OF
6 STOCK.—If a Federal home loan bank has no out-
7 standing Class C or other such nonredeemable stock,
8 then the holders of any other classes of stock of the
9 bank then outstanding shall have ownership in, and
10 a private property right in, the retained earnings,
11 surplus, undivided profits, and equity reserves, if
12 any, of the bank.

13 “(3) EXCEPTION.—Except as specifically pro-
14 vided in this section or through the declaration of a
15 dividend or a capital distribution by a Federal home
16 loan bank, or in the event of liquidation of the bank,
17 a member shall have no right to withdraw or other-
18 wise receive distribution of any portion of the re-
19 tained earnings of the bank.

20 “(4) LIMITATION.—A Federal home loan bank
21 may not make any distribution of its retained earn-
22 ings unless, following such distribution, the bank
23 would continue to meet all applicable capital require-
24 ments.”.

1 **Subtitle H—ATM Fee Reform**

2 **SEC. 171. SHORT TITLE.**

3 This subtitle may be cited as the “ATM Fee Reform
4 Act of 1999”.

5 **SEC. 172. ELECTRONIC FUND TRANSFER FEE DISCLOSURES**

6 **AT ANY HOST ATM.**

7 Section 904(d) of the Electronic Fund Transfer Act
8 (15 U.S.C. 1693b(d)) is amended by adding at the end
9 the following new paragraph:

10 “(3) FEE DISCLOSURES AT AUTOMATED TELL-
11 ER MACHINES.—

12 “(A) IN GENERAL.—The regulations pre-
13 scribed under paragraph (1) shall require any
14 automated teller machine operator who imposes
15 a fee on any consumer for providing host trans-
16 fer services to such consumer to provide notice
17 in accordance with subparagraph (B) to the
18 consumer (at the time the service is provided)
19 of—

20 “(i) the fact that a fee is imposed by
21 such operator for providing the service;
22 and

23 “(ii) the amount of any such fee.

24 “(B) NOTICE REQUIREMENTS.—

1 “(i) ON THE MACHINE.—The notice
2 required under clause (i) of subparagraph
3 (A) with respect to any fee described in
4 such subparagraph shall be posted in a
5 prominent and conspicuous location on or
6 at the automated teller machine at which
7 the electronic fund transfer is initiated by
8 the consumer; and

9 “(ii) ON THE SCREEN.—The notice
10 required under clauses (i) and (ii) of sub-
11 paragraph (A) with respect to any fee de-
12 scribed in such subparagraph shall appear
13 on the screen of the automated teller ma-
14 chine, or on a paper notice issued from
15 such machine, after the transaction is initi-
16 ated and before the consumer is irrev-
17 ocably committed to completing the trans-
18 action.

19 “(C) PROHIBITION ON FEES NOT PROP-
20 ERLY DISCLOSED AND EXPLICITLY ASSUMED BY
21 CONSUMER.—No fee may be imposed by any
22 automated teller machine operator in connec-
23 tion with any electronic fund transfer initiated
24 by a consumer for which a notice is required
25 under subparagraph (A), unless—

1 “(i) the consumer receives such notice
2 in accordance with subparagraph (B); and

3 “(ii) the consumer elects to continue
4 in the manner necessary to effect the
5 transaction after receiving such notice.

6 “(D) DEFINITIONS.—For purposes of this
7 paragraph, the following definitions shall apply:

8 “(i) ELECTRONIC FUND TRANSFER.—
9 The term ‘electronic fund transfer’ in-
10 cludes a transaction which involves a bal-
11 ance inquiry initiated by a consumer in the
12 same manner as an electronic fund trans-
13 fer, whether or not the consumer initiates
14 a transfer of funds in the course of the
15 transaction.

16 “(ii) AUTOMATED TELLER MACHINE
17 OPERATOR.—The term ‘automated teller
18 machine operator’ means any person
19 who—

20 “(I) operates an automated teller
21 machine at which consumers initiate
22 electronic fund transfers; and

23 “(II) is not the financial institu-
24 tion which holds the account of such

1 consumer from which the transfer is
2 made.

3 “(iii) HOST TRANSFER SERVICES.—

4 The term ‘host transfer services’ means
5 any electronic fund transfer made by an
6 automated teller machine operator in con-
7 nection with a transaction initiated by a
8 consumer at an automated teller machine
9 operated by such operator.”.

10 **SEC. 173. DISCLOSURE OF POSSIBLE FEES TO CONSUMERS**

11 **WHEN ATM CARD IS ISSUED.**

12 Section 905(a) of the Electronic Fund Transfer Act
13 (15 U.S.C. 1693c(a)) is amended—

14 (1) by striking “and” at the end of paragraph
15 (8);

16 (2) by striking the period at the end of para-
17 graph (9) and inserting “; and”; and

18 (3) by inserting after paragraph (9) the fol-
19 lowing new paragraph:

20 “(10) a notice to the consumer that a fee may
21 be imposed by—

22 “(A) an automated teller machine operator
23 (as defined in section 904(d)(3)(D)(ii)) if the
24 consumer initiates a transfer from an auto-
25 mated teller machine which is not operated by

1 the person issuing the card or other means of
2 access; and

3 “(B) any national, regional, or local net-
4 work utilized to effect the transaction.”.

5 **SEC. 174. FEASIBILITY STUDY.**

6 (a) IN GENERAL.—The Comptroller General of the
7 United States shall conduct a study of the feasibility of
8 requiring, in connection with any electronic fund transfer
9 initiated by a consumer through the use of an automated
10 teller machine—

11 (1) a notice to be provided to the consumer be-
12 fore the consumer is irrevocably committed to com-
13 pleting the transaction, which clearly states the
14 amount of any fee which will be imposed upon the
15 consummation of the transaction by—

16 (A) any automated teller machine operator
17 (as defined in section 904(d)(3)(D)(ii) of the
18 Electronic Fund Transfer Act) involved in the
19 transaction;

20 (B) the financial institution holding the ac-
21 count of the consumer;

22 (C) any national, regional, or local network
23 utilized to effect the transaction; and

24 (D) any other party involved in the trans-
25 fer; and

1 (2) the consumer to elect to consummate the
2 transaction after receiving the notice described in
3 paragraph (1).

4 (b) FACTORS TO BE CONSIDERED.—In conducting
5 the study required under subsection (a) with regard to the
6 notice requirement described in such subsection, the
7 Comptroller General shall consider the following factors:

8 (1) The availability of appropriate technology.

9 (2) Implementation and operating costs.

10 (3) The competitive impact any such notice re-
11 quirement would have on various sizes and types of
12 institutions, if implemented.

13 (4) The period of time which would be reason-
14 able for implementing any such notice requirement.

15 (5) The extent to which consumers would ben-
16 efit from any such notice requirement.

17 (6) Any other factor the Comptroller General
18 determines to be appropriate in analyzing the feasi-
19 bility of imposing any such notice requirement.

20 (c) REPORT TO THE CONGRESS.—Before the end of
21 the 6-month period beginning on the date of the enact-
22 ment of this Act, the Comptroller General shall submit
23 a report to the Congress containing—

1 (1) the findings and conclusions of the Comp-
2 troller General in connection with the study required
3 under subsection (a); and

4 (2) the recommendation of the Comptroller
5 General with regard to the question of whether a no-
6 tice requirement described in subsection (a) should
7 be implemented and, if so, how such requirement
8 should be implemented.

9 **SEC. 175. NO LIABILITY IF POSTED NOTICES ARE DAM-**
10 **AGED.**

11 Section 910 of the Electronic Fund Transfer Act (15
12 U.S.C 1693h) is amended by adding at the end the fol-
13 lowing new subsection:

14 “(d) EXCEPTION FOR DAMAGED NOTICES.—If the
15 notice required to be posted pursuant to section
16 904(d)(3)(B)(i) by an automated teller machine operator
17 has been posted by such operator in compliance with such
18 section and the notice is subsequently removed, damaged,
19 or altered by any person other than the operator of the
20 automated teller machine, the operator shall have no li-
21 ability under this section for failure to comply with section
22 904(d)(3)(B)(i).”.

1 **Subtitle I—Direct Activities of**
2 **Banks**

3 **SEC. 181. AUTHORITY OF NATIONAL BANKS TO UNDER-**
4 **WRITE CERTAIN MUNICIPAL BONDS.**

5 The paragraph designated the Seventh of section
6 5136 of the Revised Statutes of the United States (12
7 U.S.C. 24(7)) is amended by adding at the end the fol-
8 lowing new sentence: “In addition to the provisions in this
9 paragraph for dealing in, underwriting or purchasing secu-
10 rities, the limitations and restrictions contained in this
11 paragraph as to dealing in, underwriting, and purchasing
12 investment securities for the national bank’s own account
13 shall not apply to obligations (including limited obligation
14 bonds, revenue bonds, and obligations that satisfy the re-
15 quirements of section 142(b)(1) of the Internal Revenue
16 Code of 1986) issued by or on behalf of any State or polit-
17 ical subdivision of a State, including any municipal cor-
18 porate instrumentality of one or more States, or any pub-
19 lic agency or authority of any State or political subdivision
20 of a State, if the national bank is well capitalized (as de-
21 fined in section 38 of the Federal Deposit Insurance
22 Act).”.

**Subtitle J—Deposit Insurance
Funds**

SEC. 186. STUDY OF SAFETY AND SOUNDNESS OF FUNDS.

(a) STUDY REQUIRED.—The Board of Directors of the Federal Deposit Insurance Corporation shall conduct a study of the following issues with regard to the Bank Insurance Fund and the Savings Association Insurance Fund:

(1) SAFETY AND SOUNDNESS.—The safety and soundness of the funds and the adequacy of the reserve requirements applicable to the funds in light of—

(A) the size of the insured depository institutions which are resulting from mergers and consolidations since the effective date of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994; and

(B) the affiliation of insured depository institutions with other financial institutions pursuant to this Act and the amendments made by this Act.

(2) CONCENTRATION LEVELS.—The concentration levels of the funds, taking into account the number of members of each fund and the geographic distribution of such members, and the extent to

1 which either fund is exposed to higher risks due to
2 a regional concentration of members or an insuffi-
3 cient membership base relative to the size of member
4 institutions.

5 (3) MERGER ISSUES.—Issues relating to the
6 planned merger of the funds, including the cost of
7 merging the funds and the manner in which such
8 costs will be distributed among the members of the
9 respective funds.

10 (b) REPORT REQUIRED.—

11 (1) IN GENERAL.—Before the end of the 9-
12 month period beginning on the date of the enact-
13 ment of this Act, the Board of Directors of the Fed-
14 eral Deposit Insurance Corporation shall submit a
15 report to the Congress on the study conducted pur-
16 suant to subsection (a).

17 (2) CONTENTS OF REPORT.—The report shall
18 include—

19 (A) detailed findings of the Board of Di-
20 rectors with regard to the issues described in
21 subsection (a);

22 (B) a description of the plans developed by
23 the Board of Directors for merging the Bank
24 Insurance Fund and the Savings Association
25 Insurance Fund, including an estimate of the

1 amount of the cost of such merger which would
2 be borne by Savings Association Insurance
3 Fund members; and

4 (C) such recommendations for legislative
5 and administrative action as the Board of Di-
6 rectors determines to be necessary or appro-
7 priate to preserve the safety and soundness of
8 the deposit insurance funds, reduce the risks to
9 such funds, provide for an efficient merger of
10 such funds, and for other purposes.

11 (c) DEFINITIONS.—For purposes of this section, the
12 following definitions shall apply:

13 (1) INSURED DEPOSITORY INSTITUTION.—The
14 term “insured depository institution” has the same
15 meaning as in section 3(c) of the Federal Deposit
16 Insurance Act.

17 (2) BIF AND SAIF MEMBERS.—The terms
18 “Bank Insurance Fund member” and “Savings As-
19 sociation Insurance Fund member” have the same
20 meanings as in section 7(l) of the Federal Deposit
21 Insurance Act.

1 **SEC. 187. ELIMINATION OF SAIF AND DIF SPECIAL RE-**
 2 **SERVES.**

3 (a) SAIF SPECIAL RESERVES.—Section 11(a)(6) of
 4 the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6))
 5 is amended by striking subparagraph (L).

6 (b) DIF SPECIAL RESERVES.—Section 2704 of the
 7 Deposit Insurance Funds Act of 1996 (12 U.S.C. 1821
 8 note) is amended—

9 (1) by striking subsection (b); and

10 (2) in subsection (d)—

11 (A) by striking paragraph (4);

12 (B) in paragraph (6)(C)(i), by striking
 13 “(6) and (7)” and inserting “(5), (6), and (7)”;

14 and

15 (C) in paragraph (6)(C), by striking clause

16 (ii) and inserting the following:

17 “(ii) by redesignating paragraph (8)
 18 as paragraph (5).”.

19 **Subtitle K—Miscellaneous**
 20 **Provisions**

21 **SEC. 191. TERMINATION OF “KNOW YOUR CUSTOMER” REG-**
 22 **ULATIONS.**

23 (a) IN GENERAL.—None of the proposed regulations
 24 described in subsection (b) may be published in final form
 25 and, to the extent any such regulation has become effec-

1 tive before the date of the enactment of this Act, such
2 regulation shall cease to be effective as of such date.

3 (b) PROPOSED REGULATIONS DESCRIBED.—The
4 proposed regulations referred to in subsection (a) are as
5 follows:

6 (1) The regulation proposed by the Comptroller
7 of the Currency to amend part 21 of title 12 of the
8 Code of Federal Regulations, as published in the
9 Federal Register on December 7, 1998.

10 (2) The regulation proposed by the Director of
11 the Office of Thrift Supervision to amend part 563
12 of title 12 of the Code of Federal Regulations, as
13 published in the Federal Register on December 7,
14 1998.

15 (3) The regulation proposed by the Board of
16 Governors of the Federal Reserve System to amend
17 parts 208, 211, and 225 of title 12 of the Code of
18 Federal Regulations, as published in the Federal
19 Register on December 7, 1998.

20 (4) The regulation proposed by the Federal De-
21 posit Insurance Corporation to amend part 326 of
22 title 12 of the Code of Federal Regulations, as pub-
23 lished in the Federal Register on December 7, 1998.

1 **SEC. 192. STUDY AND REPORT ON FEDERAL ELECTRONIC**
2 **FUND TRANSFERS.**

3 (a) STUDY.—The Secretary of the Treasury shall
4 conduct a feasibility study to determine—

5 (1) whether all electronic payments issued by
6 Federal agencies could be routed through the Re-
7 gional Finance Centers of the Department of the
8 Treasury for verification and reconciliation;

9 (2) whether all electronic payments made by the
10 Federal Government could be subjected to the same
11 level of reconciliation as United States Treasury
12 checks, including matching each payment issued
13 with each corresponding deposit at financial institu-
14 tions;

15 (3) whether the appropriate computer security
16 controls are in place in order to ensure the integrity
17 of electronic payments;

18 (4) the estimated costs of implementing, if so
19 recommended, the processes and controls described
20 in paragraphs (1), (2), and (3); and

21 (5) a possible timetable for implementing those
22 processes if so recommended.

23 (b) REPORT TO CONGRESS.—Not later than October
24 1, 2000, the Secretary of the Treasury shall submit a re-
25 port to Congress containing the results of the study re-
26 quired by subsection (a).

1 (c) DEFINITION.—For purposes of this section, the
2 term “electronic payment” means any transfer of funds,
3 other than a transaction originated by check, draft, or
4 similar paper instrument, which is initiated through an
5 electronic terminal, telephonic instrument, or computer or
6 magnetic tapes so as to order, instruct, or authorize a
7 debit or credit to a financial account.

8 **SEC. 193. GENERAL ACCOUNTING OFFICE STUDY OF CON-**
9 **FLICTS OF INTEREST**

10 (a) STUDY REQUIRED.—The Comptroller General of
11 the United States shall conduct a study analyzing the con-
12 flict of interest faced by the Board of Governors of the
13 Federal Reserve System between its role as a primary reg-
14 ulator of the banking industry and its role as a vendor
15 of services to the banking and financial services industry.

16 (b) SPECIFIC CONFLICT REQUIRED TO BE AD-
17 DRESSED.—In the course of the study required under sub-
18 section (a), the Comptroller General shall address the con-
19 flict of interest faced by the Board of Governors of the
20 Federal Reserve System between the role of the Board as
21 a regulator of the payment system, generally, and its par-
22 ticipation in the payment system as a competitor with pri-
23 vate entities who are providing payment services.

24 (c) REPORT TO CONGRESS.—Before the end of the
25 1-year period beginning on the date of the enactment of

1 this Act, the Comptroller General shall submit a report
2 to the Congress containing the findings and conclusions
3 of the Comptroller General in connection with the study
4 required under this section, together with such rec-
5 ommendations for such legislative or administrative ac-
6 tions as the Comptroller General may determine to be ap-
7 propriate, including recommendations for resolving any
8 such conflict of interest.

9 **SEC. 194. STUDY OF COST OF ALL FEDERAL BANKING REG-**
10 **ULATIONS.**

11 (a) IN GENERAL.—In accordance with the finding in
12 the Board of Governors of the Federal Reserve System
13 Staff Study Numbered 171 (April, 1998) that “Further
14 research covering more and different types of regulations
15 and regulatory requirements is clearly needed to make in-
16 formed decisions about regulations”, the Board of Gov-
17 ernors of the Federal Reserve System, in consultation with
18 the other Federal banking agencies (as defined in section
19 3 of the Federal Deposit Insurance Act) shall conduct a
20 comprehensive study of the total annual costs and benefits
21 of all Federal financial regulations and regulatory require-
22 ments applicable to banks.

23 (b) REPORT REQUIRED.—Before the end of the 2-
24 year period beginning on the date of the enactment of this
25 Act, the Board of Governors of the Federal Reserve Sys-

1 tem shall submit a comprehensive report to the Congress
2 containing the findings and conclusions of the Board in
3 connection with the study required under subsection (a)
4 and such recommendations for legislative and administra-
5 tive action as the Board may determine to be appropriate.

6 **SEC. 195. STUDY AND REPORT ON ADAPTING EXISTING**
7 **LEGISLATIVE REQUIREMENTS TO ONLINE**
8 **BANKING AND LENDING.**

9 (a) STUDY REQUIRED.—The Federal banking agen-
10 cies shall conduct a study of banking regulations regard-
11 ing the delivery of financial services, including those regu-
12 lations that may assume that there will be person-to-per-
13 son contact during the course of a financial services trans-
14 action, and report their recommendations on adapting
15 those existing requirements to online banking and lending.

16 (b) REPORT REQUIRED.—Within 1 year of the date
17 of the enactment of this Act, the Federal banking agencies
18 shall submit a report to the Congress on the findings and
19 conclusions of the agencies with respect to the study re-
20 quired under subsection (a), together with such rec-
21 ommendations for legislative or regulatory action as the
22 agencies may determine to be appropriate.

23 (c) DEFINITION.—For purposes of this section, the
24 term “Federal banking agencies” means each Federal

1 banking agency (as defined in section 3(z) of the Federal
2 Deposit Insurance Act).

3 **SEC. 196. REGULATION OF UNINSURED STATE MEMBER**
4 **BANKS.**

5 Section 9 of the Federal Reserve Act (12 U.S.C. 321
6 et seq.) is amended by adding at the end the following
7 new paragraph:

8 “(24) ENFORCEMENT AUTHORITY OVER UNIN-
9 SURED STATE MEMBER BANKS.—Section 3(u) of the
10 Federal Deposit Insurance Act, subsections (j) and
11 (k) of section 7 of such Act, and subsections (b)
12 through (n), (s), (u), and (v) of section 8 of such
13 Act shall apply to an uninsured State member bank
14 in the same manner and to the same extent such
15 provisions apply to an insured State member bank
16 and any reference in any such provision to ‘insured
17 depository institution’ shall be deemed to be a ref-
18 erence to ‘uninsured State member bank’ for pur-
19 poses of this paragraph.”.

20 **SEC. 197. CLARIFICATION OF SOURCE OF STRENGTH DOC-**
21 **TRINE.**

22 Section 18 of the Federal Deposit Insurance Act (21
23 U.S.C. 1828) is amended by adding at the end the fol-
24 lowing new subsection:

25 “(t) LIMITATION ON CLAIMS.—

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision of law other than paragraph (2), no person
3 shall have any claim for monetary damages or re-
4 turn of assets or other property against any Federal
5 banking agency (including in its capacity as conser-
6 vator or receiver) relating to the transfer of money,
7 assets, or other property to increase the capital of
8 an insured depository institution by any depository
9 institution holding company or controlling share-
10 holder for such depository institution, or any affil-
11 iate or subsidiary of such depository institution, if at
12 the time of the transfer—

13 “(A) the insured depository institution is
14 subject to any direction issued in writing by a
15 Federal banking agency to increase its capital;

16 “(B) the depository institution is under-
17 capitalized, significantly undercapitalized, or
18 critically undercapitalized (as defined in section
19 38 of this Act); and

20 “(C) for that portion of the transfer that
21 is made by an entity covered by section 5(g) of
22 the Bank Holding Company Act of 1956 or sec-
23 tion 45 of this Act, the Federal banking agency
24 has followed the procedure set forth in such
25 section.

1 “(2) EXCEPTION.—No provision of this sub-
2 section shall be construed as limiting—

3 “(A) the right of an insured depository in-
4 stitution, a depository institution holding com-
5 pany, or any other agency or person to seek di-
6 rect review of an order or directive issued by a
7 Federal banking agency under this Act, the
8 Bank Holding Company Act of 1956, the Na-
9 tional Bank Receivership Act, the Bank Con-
10 servation Act, or the Home Owners’ Loan Act;

11 “(B) the rights of any party to a contract
12 pursuant to section 11(e) of this Act; or

13 “(C) the rights of any party to a contract
14 with a depository institution holding company
15 or a subsidiary of a depository institution hold-
16 ing company (other than an insured depository
17 institution).”.

18 **SEC. 198. INTEREST RATES AND OTHER CHARGES AT**
19 **INTERSTATE BRANCHES.**

20 Section 44 of the Federal Deposit Insurance Act (12
21 U.S.C. 1831u) is amended—

22 (1) by redesignating subsection (f) as sub-
23 section (g); and

24 (2) by inserting after subsection (e) the fol-
25 lowing:

1 “(f) APPLICABLE RATE AND OTHER CHARGE LIM-
2 TATIONS.—

3 “(1) IN GENERAL.—Except as provided for in
4 paragraph (3), upon the establishment of a branch
5 of any insured depository institution in a host State
6 under this section, the maximum interest rate or
7 amount of interest, discount points, finance charges,
8 or other similar charges that may be charged, taken,
9 received, or reserved from time to time in any loan
10 or discount made or upon any note, bill of exchange,
11 financing transaction, or other evidence of debt by
12 any insured depository institution in such State shall
13 be equal to not more than the greater of—

14 “(A) the maximum interest rate or amount
15 of interest, discount points, finance charges, or
16 other similar charges that may be charged,
17 taken, received, or reserved in a similar trans-
18 action under the constitution, statutory, or
19 other laws of the home State of the insured de-
20 pository institution establishing any such
21 branch, without reference to this section, as
22 such maximum interest rate or amount of inter-
23 est may change from time to time; or

24 “(B) the maximum rate or amount of in-
25 terest, discount points, finance charges, or

other similar charges that may be charged, taken, received, or reserved in a similar transaction by an insured depository institution under the constitution, statutory, or other laws of the host State, without reference to this section.

“(2) PREEMPTION.—The limitations established under paragraph (1) shall apply only in any State that has a constitutional provision that sets a maximum lawful rate of interest on any contract at not more than 5 percent per annum above the Federal Reserve Discount Rate or 90-day commercial paper in effect in the Federal Reserve Bank in the Federal Reserve District in which the State is located.

“(3) RULE OF CONSTRUCTION.—No provision of this subsection shall be construed as superseding section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980.

SEC. 198A. INTERSTATE BRANCHES AND AGENCIES OF FOREIGN BANKS.

Section 5(a)(7) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(7)), is amended to read as follows:

“(7) ADDITIONAL AUTHORITY FOR INTERSTATE BRANCHES AND AGENCIES OF FOREIGN BANKS, UP-

1 GRADES OF CERTAIN FOREIGN BANK AGENCIES AND
2 BRANCHES.—Notwithstanding paragraphs (1) and
3 (2), a foreign bank may—

4 “(A) with the approval of the Board and
5 the Comptroller of the Currency, establish and
6 operate a Federal branch or Federal agency or,
7 with the approval of the Board and the appro-
8 priate State bank supervisor, a State branch or
9 State agency in any State outside the foreign
10 bank’s home State if—

11 “(i) the establishment and operation
12 of such branch or agency is permitted by
13 the State in which the branch or agency is
14 to be established; and

15 “(ii) in the case of a Federal or State
16 branch, the branch receives only such de-
17 posits as would be permitted for a corpora-
18 tion organized under section 25A of the
19 Federal Reserve Act (12 U.S.C. 611 et
20 seq.); or

21 “(B) with the approval of the Board and
22 the relevant licensing authority (the Comp-
23 troller in the case of a Federal branch or the
24 appropriate State supervisor in the case of a
25 State branch), upgrade an agency, or a branch

1 of the type referred to in subparagraph (A)(ii),
2 located in a State outside the foreign bank's
3 home State, into a Federal or State branch if—

4 “(i) the establishment and operation
5 of such branch is permitted by such State;
6 and

7 “(ii) such agency or branch—

8 “(I) was in operation in such
9 State on the day before September 29,
10 1994; or

11 “(II) has been in operation in
12 such State for a period of time that
13 meets the State's minimum age re-
14 quirement permitted under section
15 44(a)(5) of the Federal Deposit Insur-
16 ance Act.”.

17 **SEC. 198B. FAIR TREATMENT OF WOMEN BY FINANCIAL AD-**
18 **VISERS.**

19 (a) FINDINGS.—The Congress finds as follows:

20 (1) Women's stature in society has risen consid-
21 erably, as they are now able to vote, own property,
22 and pursue independent careers, and are granted
23 equal protection under the law.

24 (2) Women are at least as fiscally responsible
25 as men, and more than half of all women have sole

1 responsibility for balancing the family checkbook and
2 paying the bills.

3 (3) Estate planners, trust officers, investment
4 advisers, and other financial planners and advisers
5 still encourage the unjust and outdated practice of
6 leaving assets in trust for the category of wives and
7 daughters, along with senile parents, minors, and
8 mentally incompetent children.

9 (4) Estate planners, trust officers, investment
10 advisers, and other financial planners and advisers
11 still use sales themes and tactics detrimental to
12 women by stereotyping women as uncomfortable
13 handling money and needing protection from their
14 own possible errors of judgment and “fortune hunt-
15 ers”.

16 (b) SENSE OF THE CONGRESS.—It is the sense of
17 the Congress that estate planners, trust officers, invest-
18 ment advisers, and other financial planners and advisers
19 should—

20 (1) eliminate examples in their training mate-
21 rials which portray women as incapable and foolish;
22 and

23 (2) develop fairer and more balanced presen-
24 tations that eliminate outmoded and stereotypical

1 examples which lead clients to take actions that are
2 financially detrimental to their wives and daughters.

3 **Subtitle L—Effective Date of Title**

4 **SEC. 199. EFFECTIVE DATE.**

5 Except with regard to any subtitle or other provision
6 of this title for which a specific effective date is provided,
7 this title and the amendments made by this title shall take
8 effect at the end of the 180-day period beginning on the
9 date of the enactment of this Act.

10 **TITLE II—FUNCTIONAL** 11 **REGULATION**

12 **Subtitle A—Brokers and Dealers**

13 **SEC. 201. DEFINITION OF BROKER.**

14 Section 3(a)(4) of the Securities Exchange Act of
15 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

16 “(4) BROKER.—

17 “(A) IN GENERAL.—The term ‘broker’
18 means any person engaged in the business of
19 effecting transactions in securities for the ac-
20 count of others.

21 “(B) EXCEPTION FOR CERTAIN BANK AC-
22 TIVITIES.—A bank shall not be considered to be
23 a broker because the bank engages in any one
24 or more of the following activities under the
25 conditions described:

1 “(i) THIRD PARTY BROKERAGE AR-
2 RANGEMENTS.—The bank enters into a
3 contractual or other written arrangement
4 with a broker or dealer registered under
5 this title under which the broker or dealer
6 offers brokerage services on or off the
7 premises of the bank if—

8 “(I) such broker or dealer is
9 clearly identified as the person per-
10 forming the brokerage services;

11 “(II) the broker or dealer per-
12 forms brokerage services in an area
13 that is clearly marked and, to the ex-
14 tent practicable, physically separate
15 from the routine deposit-taking activi-
16 ties of the bank;

17 “(III) any materials used by the
18 bank to advertise or promote generally
19 the availability of brokerage services
20 under the arrangement clearly indi-
21 cate that the brokerage services are
22 being provided by the broker or dealer
23 and not by the bank;

24 “(IV) any materials used by the
25 bank to advertise or promote generally

1 the availability of brokerage services
2 under the arrangement are in compli-
3 ance with the Federal securities laws
4 before distribution;

5 “(V) bank employees (other than
6 associated persons of a broker or deal-
7 er who are qualified pursuant to the
8 rules of a self-regulatory organization)
9 perform only clerical or ministerial
10 functions in connection with broker-
11 age transactions including scheduling
12 appointments with the associated per-
13 sons of a broker or dealer, except that
14 bank employees may forward cus-
15 tomer funds or securities and may de-
16 scribe in general terms the types of
17 investment vehicles available from the
18 bank and the broker or dealer under
19 the arrangement;

20 “(VI) bank employees do not re-
21 ceive incentive compensation for any
22 brokerage transaction unless such em-
23 ployees are associated persons of a
24 broker or dealer and are qualified
25 pursuant to the rules of a self-regu-

1 latory organization, except that the
2 bank employees may receive com-
3 pensation for the referral of any cus-
4 tomer if the compensation is a nomi-
5 nal one-time cash fee of a fixed dollar
6 amount and the payment of the fee is
7 not contingent on whether the referral
8 results in a transaction;

9 “(VII) such services are provided
10 by the broker or dealer on a basis in
11 which all customers which receive any
12 services are fully disclosed to the
13 broker or dealer;

14 “(VIII) the bank does not carry
15 a securities account of the customer
16 except as permitted under clause (ii)
17 or (viii) of this subparagraph; and

18 “(IX) the bank, broker, or dealer
19 informs each customer that the bro-
20 kerage services are provided by the
21 broker or dealer and not by the bank
22 and that the securities are not depos-
23 its or other obligations of the bank,
24 are not guaranteed by the bank, and

1 are not insured by the Federal De-
2 posit Insurance Corporation.

3 “(ii) TRUST ACTIVITIES.—The bank
4 effects transactions in a trustee or fidu-
5 ciary capacity in its trust department, or
6 another department where the trust or fi-
7 duciary activity is regularly examined by
8 bank examiners under the same standards
9 and in the same way as such activities are
10 examined in the trust department, and—

11 “(I) is chiefly compensated for
12 such transactions, consistent with fi-
13 duciary principles and standards, on
14 the basis of an administration or an-
15 nual fee (payable on a monthly, quar-
16 terly, or other basis), a percentage of
17 assets under management, or a flat or
18 capped per order processing fee equal
19 to not more than the cost incurred by
20 the bank in connection with executing
21 securities transactions for trustee and
22 fiduciary customers, or any combina-
23 tion of such fees; and

24 “(II) does not solicit brokerage
25 business, other than by advertising

1 that it effects transactions in securi-
2 ties in conjunction with advertising its
3 other trust activities.

4 “(iii) PERMISSIBLE SECURITIES
5 TRANSACTIONS.—The bank effects trans-
6 actions in—

7 “(I) commercial paper, bankers
8 acceptances, or commercial bills;

9 “(II) exempted securities;

10 “(III) qualified Canadian govern-
11 ment obligations as defined in section
12 5136 of the Revised Statutes, in con-
13 formity with section 15C of this title
14 and the rules and regulations there-
15 under, or obligations of the North
16 American Development Bank; or

17 “(IV) any standardized, credit
18 enhanced debt security issued by a
19 foreign government pursuant to the
20 March 1989 plan of then Secretary of
21 the Treasury Brady, used by such for-
22 eign government to retire outstanding
23 commercial bank loans.

24 “(iv) CERTAIN STOCK PURCHASE
25 PLANS.—

1 “(I) EMPLOYEE BENEFIT

2 PLANS.—The bank effects trans-
3 actions, as a registered transfer agent
4 (including as a registrar of stocks), in
5 the securities of an issuer as part of
6 any pension, retirement, profit-shar-
7 ing, bonus, thrift, savings, incentive,
8 or other similar benefit plan for the
9 employees of that issuer or its affili-
10 ates (as defined in section 2 of the
11 Bank Holding Company Act of 1956),
12 if—

13 “(aa) the bank does not so-
14 licit transactions or provide in-
15 vestment advice with respect to
16 the purchase or sale of securities
17 in connection with the plan; and

18 “(bb) the bank’s compensa-
19 tion for such plan or program
20 consists chiefly of administration
21 fees, or flat or capped per order
22 processing fees, or both.

23 “(II) DIVIDEND REINVESTMENT

24 PLANS.—The bank effects trans-
25 actions, as a registered transfer agent

1 (including as a registrar of stocks), in
2 the securities of an issuer as part of
3 that issuer's dividend reinvestment
4 plan, if—

5 “(aa) the bank does not so-
6 licit transactions or provide in-
7 vestment advice with respect to
8 the purchase or sale of securities
9 in connection with the plan;

10 “(bb) the bank does not net
11 shareholders' buy and sell orders,
12 other than for programs for odd-
13 lot holders or plans registered
14 with the Commission; and

15 “(cc) the bank's compensa-
16 tion for such plan or program
17 consists chiefly of administration
18 fees, or flat or capped per order
19 processing fees, or both.

20 “(III) ISSUER PLANS.—The bank
21 effects transactions, as a registered
22 transfer agent (including as a reg-
23 istrar of stocks), in the securities of
24 an issuer as part of that issuer's plan

1 for the purchase or sale of that
2 issuer's shares, if—

3 “(aa) the bank does not so-
4 licit transactions or provide in-
5 vestment advice with respect to
6 the purchase or sale of securities
7 in connection with the plan or
8 program;

9 “(bb) the bank does not net
10 shareholders' buy and sell orders,
11 other than for programs for odd-
12 lot holders or plans registered
13 with the Commission; and

14 “(cc) the bank's compensa-
15 tion for such plan or program
16 consists chiefly of administration
17 fees, or flat or capped per order
18 processing fees, or both.

19 “(IV) PERMISSIBLE DELIVERY
20 OF MATERIALS.—The exception to
21 being considered a broker for a bank
22 engaged in activities described in sub-
23 clauses (I), (II), and (III) will not be
24 affected by a bank's delivery of writ-
25 ten or electronic plan materials to em-

1 ployees of the issuer, shareholders of
2 the issuer, or members of affinity
3 groups of the issuer, so long as such
4 materials are—

5 “(aa) comparable in scope or
6 nature to that permitted by the
7 Commission as of the date of the
8 enactment of the Financial Serv-
9 ices Act of 1999; or

10 “(bb) otherwise permitted by
11 the Commission.

12 “(v) SWEEP ACCOUNTS.—The bank
13 effects transactions as part of a program
14 for the investment or reinvestment of de-
15 posit funds into any no-load, open-end
16 management investment company reg-
17 istered under the Investment Company Act
18 of 1940 that holds itself out as a money
19 market fund.

20 “(vi) AFFILIATE TRANSACTIONS.—
21 The bank effects transactions for the ac-
22 count of any affiliate (as defined in section
23 2 of the Bank Holding Company Act of
24 1956) of the bank other than—

1 “(I) a registered broker or deal-
2 er; or

3 “(II) an affiliate that is engaged
4 in merchant banking, as described in
5 section 6(c)(3)(H) of the Bank Hold-
6 ing Company Act of 1956.

7 “(vii) PRIVATE SECURITIES OFFER-
8 INGS.—The bank—

9 “(I) effects sales as part of a pri-
10 mary offering of securities not involv-
11 ing a public offering, pursuant to sec-
12 tion 3(b), 4(2), or 4(6) of the Securi-
13 ties Act of 1933 or the rules and reg-
14 ulations issued thereunder;

15 “(II) at any time after the date
16 that is 1 year after the date of the en-
17 actment of the Financial Services Act
18 of 1999, is not affiliated with a broker
19 or dealer that has been registered for
20 more than 1 year in accordance with
21 this Act, and engages in dealing, mar-
22 ket making, or underwriting activities,
23 other than with respect to exempted
24 securities; and

1 “(III) effects transactions exclu-
2 sively with qualified investors.

3 “(viii) SAFEKEEPING AND CUSTODY
4 ACTIVITIES.—

5 “(I) IN GENERAL.—The bank, as
6 part of customary banking activities—

7 “(aa) provides safekeeping
8 or custody services with respect
9 to securities, including the exer-
10 cise of warrants and other rights
11 on behalf of customers;

12 “(bb) facilitates the transfer
13 of funds or securities, as a custo-
14 dian or a clearing agency, in con-
15 nection with the clearance and
16 settlement of its customers’
17 transactions in securities;

18 “(cc) effects securities lend-
19 ing or borrowing transactions
20 with or on behalf of customers as
21 part of services provided to cus-
22 tomers pursuant to division (aa)
23 or (bb) or invests cash collateral
24 pledged in connection with such
25 transactions; or

1 “(dd) holds securities
2 pledged by a customer to another
3 person or securities subject to
4 purchase or resale agreements in-
5 volving a customer, or facilitates
6 the pledging or transfer of such
7 securities by book entry or as
8 otherwise provided under applica-
9 ble law, if the bank maintains
10 records separately identifying the
11 securities and the customer.

12 “(II) EXCEPTION FOR CARRYING
13 BROKER ACTIVITIES.—The exception
14 to being considered a broker for a
15 bank engaged in activities described in
16 subclause (I) shall not apply if the
17 bank, in connection with such activi-
18 ties, acts in the United States as a
19 carrying broker (as such term, and
20 different formulations thereof, are
21 used in section 15(c)(3) of this title
22 and the rules and regulations there-
23 under) for any broker or dealer, un-
24 less such carrying broker activities are
25 engaged in with respect to government

1 securities (as defined in paragraph
2 (42) of this subsection).

3 “(ix) EXCEPTED BANKING PROD-
4 UCTS.—The bank effects transactions in
5 excepted banking products, as defined in
6 section 206 of the Financial Services Act
7 of 1999.

8 “(x) MUNICIPAL SECURITIES.—The
9 bank effects transactions in municipal se-
10 curities.

11 “(xi) DE MINIMIS EXCEPTION.—The
12 bank effects, other than in transactions re-
13 ferred to in clauses (i) through (x), not
14 more than 500 transactions in securities in
15 any calendar year, and such transactions
16 are not effected by an employee of the
17 bank who is also an employee of a broker
18 or dealer.

19 “(C) BROKER DEALER EXECUTION.—The
20 exception to being considered a broker for a
21 bank engaged in activities described in clauses
22 (ii), (iv), and (viii) of subparagraph (B) shall
23 not apply if the activities described in such pro-
24 visions result in the trade in the United States

1 of any security that is a publicly traded security
2 in the United States, unless—

3 “(i) the bank directs such trade to a
4 registered broker or dealer for execution;

5 “(ii) the trade is a cross trade or
6 other substantially similar trade of a secu-
7 rity that—

8 “(I) is made by the bank or be-
9 tween the bank and an affiliated fidu-
10 ciary; and

11 “(II) is not in contravention of
12 fiduciary principles established under
13 applicable Federal or State law; or

14 “(iii) the trade is conducted in some
15 other manner permitted under rules, regu-
16 lations, or orders as the Commission may
17 prescribe or issue.

18 “(D) FIDUCIARY CAPACITY.—For purposes
19 of subparagraph (B)(ii), the term ‘fiduciary ca-
20 pacity’ means—

21 “(i) in the capacity as trustee, execu-
22 tor, administrator, registrar of stocks and
23 bonds, transfer agent, guardian, assignee,
24 receiver, or custodian under a uniform gift
25 to minor act, or as an investment adviser

1 if the bank receives a fee for its investment
2 advice;

3 “(ii) in any capacity in which the
4 bank possesses investment discretion on
5 behalf of another; or

6 “(iii) in any other similar capacity.

7 “(F) EXCEPTION FOR ENTITIES SUBJECT
8 TO SECTION 15(e).—The term ‘broker’ does not
9 include a bank that—

10 “(i) was, immediately prior to the en-
11 actment of the Financial Services Act of
12 1999, subject to section 15(e) of this title;
13 and

14 “(ii) is subject to such restrictions
15 and requirements as the Commission con-
16 siders appropriate.”.

17 **SEC. 202. DEFINITION OF DEALER.**

18 Section 3(a)(5) of the Securities Exchange Act of
19 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

20 “(5) DEALER.—

21 “(A) IN GENERAL.—The term ‘dealer’
22 means any person engaged in the business of
23 buying and selling securities for such person’s
24 own account through a broker or otherwise.

1 “(B) EXCEPTION FOR PERSON NOT EN-
2 GAGED IN THE BUSINESS OF DEALING.—The
3 term ‘dealer’ does not include a person that
4 buys or sells securities for such person’s own
5 account, either individually or in a fiduciary ca-
6 pacity, but not as a part of a regular business.

7 “(C) EXCEPTION FOR CERTAIN BANK AC-
8 TIVITIES.—A bank shall not be considered to be
9 a dealer because the bank engages in any of the
10 following activities under the conditions de-
11 scribed:

12 “(i) PERMISSIBLE SECURITIES TRANS-
13 ACTIONS.—The bank buys or sells—

14 “(I) commercial paper, bankers
15 acceptances, or commercial bills;

16 “(II) exempted securities;

17 “(III) qualified Canadian govern-
18 ment obligations as defined in section
19 5136 of the Revised Statutes of the
20 United States, in conformity with sec-
21 tion 15C of this title and the rules
22 and regulations thereunder, or obliga-
23 tions of the North American Develop-
24 ment Bank; or

1 “(IV) any standardized, credit
2 enhanced debt security issued by a
3 foreign government pursuant to the
4 March 1989 plan of then Secretary of
5 the Treasury Brady, used by such for-
6 eign government to retire outstanding
7 commercial bank loans.

8 “(ii) INVESTMENT, TRUSTEE, AND FI-
9 DUCIARY TRANSACTIONS.—The bank buys
10 or sells securities for investment
11 purposes—

12 “(I) for the bank; or

13 “(II) for accounts for which the
14 bank acts as a trustee or fiduciary.

15 “(iii) ASSET-BACKED TRANS-
16 ACTIONS.—The bank engages in the
17 issuance or sale to qualified investors,
18 through a grantor trust or other separate
19 entity, of securities backed by or rep-
20 resenting an interest in notes, drafts, ac-
21 ceptances, loans, leases, receivables, other
22 obligations (other than securities of which
23 the bank is not the issuer), or pools of any
24 such obligations predominantly originated
25 by—

1 “(I) the bank;

2 “(II) an affiliate of any such
3 bank other than a broker or dealer; or

4 “(III) a syndicate of banks of
5 which the bank is a member, if the
6 obligations or pool of obligations con-
7 sists of mortgage obligations or con-
8 sumer-related receivables.

9 “(iv) EXCEPTED BANKING PROD-
10 UCTS.—The bank buys or sells excepted
11 banking products, as defined in section
12 206 of the Financial Services Act of 1999.

13 “(v) DERIVATIVE INSTRUMENTS.—
14 The bank issues, buys, or sells any deriva-
15 tive instrument to which the bank is a
16 party—

17 “(I) to or from a qualified inves-
18 tor, except that if the instrument pro-
19 vides for the delivery of one or more
20 securities (other than a derivative in-
21 strument or government security), the
22 transaction shall be effected with or
23 through a registered broker or dealer;
24 or

1 “(II) to or from other persons,
2 except that if the derivative instru-
3 ment provides for the delivery of one
4 or more securities (other than a deriv-
5 ative instrument or government secu-
6 rity), or is a security (other than a
7 government security), the transaction
8 shall be effected with or through a
9 registered broker or dealer; or

10 “(III) to or from any person if
11 the instrument is neither a security
12 nor provides for the delivery of one or
13 more securities (other than a deriva-
14 tive instrument).”.

15 **SEC. 203. REGISTRATION FOR SALES OF PRIVATE SECURI-**
16 **TIES OFFERINGS.**

17 Section 15A of the Securities Exchange Act of 1934
18 (15 U.S.C. 78o-3) is amended by inserting after sub-
19 section (i) the following new subsection:

20 “(j) REGISTRATION FOR SALES OF PRIVATE SECURI-
21 TIES OFFERINGS.—A registered securities association
22 shall create a limited qualification category for any associ-
23 ated person of a member who effects sales as part of a
24 primary offering of securities not involving a public offer-
25 ing, pursuant to section 3(b), 4(2), or 4(6) of the Securi-

1 ties Act of 1933 and the rules and regulations thereunder,
2 and shall deem qualified in such limited qualification cat-
3 egory, without testing, any bank employee who, in the six
4 month period preceding the date of the enactment of this
5 Act, engaged in effecting such sales.”.

6 **SEC. 204. INFORMATION SHARING.**

7 Section 18 of the Federal Deposit Insurance Act is
8 amended by adding at the end the following new sub-
9 section:

10 “(t) RECORDKEEPING REQUIREMENTS.—

11 “(1) REQUIREMENTS.—Each appropriate Fed-
12 eral banking agency, after consultation with and
13 consideration of the views of the Commission, shall
14 establish recordkeeping requirements for banks rely-
15 ing on exceptions contained in paragraphs (4) and
16 (5) of section 3(a) of the Securities Exchange Act of
17 1934. Such recordkeeping requirements shall be suf-
18 ficient to demonstrate compliance with the terms of
19 such exceptions and be designed to facilitate compli-
20 ance with such exceptions. Each appropriate Federal
21 banking agency shall make any such information
22 available to the Commission upon request.

23 “(2) DEFINITIONS.—As used in this subsection
24 the term ‘Commission’ means the Securities and Ex-
25 change Commission.”.

1 **SEC. 205. TREATMENT OF NEW HYBRID PRODUCTS.**

2 Section 15 of the Securities Exchange Act of 1934
3 (15 U.S.C. 78o) is amended by adding at the end the fol-
4 lowing new subsection:

5 “(i) RULEMAKING TO EXTEND REQUIREMENTS TO
6 NEW HYBRID PRODUCTS.—

7 “(1) LIMITATION.—The Commission shall
8 not—

9 “(A) require a bank to register as a broker
10 or dealer under this section because the bank
11 engages in any transaction in, or buys or sells,
12 a new hybrid product; or

13 “(B) bring an action against a bank for a
14 failure to comply with a requirement described
15 in subparagraph (A),
16 unless the Commission has imposed such require-
17 ment by rule or regulation issued in accordance with
18 this section.

19 “(2) CRITERIA FOR RULEMAKING.—The Com-
20 mission shall not impose a requirement under para-
21 graph (1) of this subsection with respect to any new
22 hybrid product unless the Commission determines
23 that—

24 “(A) the new hybrid product is a security;
25 and

1 “(B) imposing such requirement is nec-
2 essary or appropriate in the public interest and
3 for the protection of investors, consistent with
4 the requirements of section 3(f).

5 “(3) CONSIDERATIONS.—In making a deter-
6 mination under paragraph (2), the Commission shall
7 consider—

8 “(A) the nature of the new hybrid product;
9 and

10 “(B) the history, purpose, extent, and ap-
11 propriateness of the regulation of the new hy-
12 brid product under the Federal securities laws
13 and under the Federal banking laws.

14 “(4) CONSULTATION.—In promulgating rules
15 under this subsection, the Commission shall consult
16 with and consider the views of the Board of Gov-
17 ernors of the Federal Reserve System regarding the
18 nature of the new hybrid product, the history, pur-
19 pose, extent, and appropriateness of the regulation
20 of the new product under the Federal banking laws,
21 and the impact of the proposed rule on the banking
22 industry.

23 “(5) NEW HYBRID PRODUCT.—For purposes of
24 this subsection, the term ‘new hybrid product’ means
25 a product that—

1 “(A) was not subjected to regulation by
2 the Commission as a security prior to the date
3 of the enactment of this subsection; and

4 “(B) is not an excepted banking product,
5 as such term is defined in section 206 of the
6 Financial Services Act of 1999.”.

7 **SEC. 206. DEFINITION OF EXCEPTED BANKING PRODUCT.**

8 (a) DEFINITION OF EXCEPTED BANKING PROD-
9 UCT.—For purposes of paragraphs (4) and (5) of section
10 3(a) of the Securities Exchange Act of 1934 (15 U.S.C.
11 78c(a) (4), (5)), the term “excepted banking product”
12 means—

13 (1) a deposit account, savings account, certifi-
14 cate of deposit, or other deposit instrument issued
15 by a bank;

16 (2) a banker’s acceptance;

17 (3) a letter of credit issued or loan made by a
18 bank;

19 (4) a debit account at a bank arising from a
20 credit card or similar arrangement;

21 (5) a participation in a loan which the bank or
22 an affiliate of the bank (other than a broker or deal-
23 er) funds, participates in, or owns that is sold—

24 (A) to qualified investors; or

25 (B) to other persons that—

1 (i) have the opportunity to review and
2 assess any material information, including
3 information regarding the borrower's cred-
4 itworthiness; and

5 (ii) based on such factors as financial
6 sophistication, net worth, and knowledge
7 and experience in financial matters, have
8 the capability to evaluate the information
9 available, as determined under generally
10 applicable banking standards or guidelines;
11 or

12 (6) a derivative instrument that involves or re-
13 lates to—

14 (A) currencies, except options on cur-
15 rencies that trade on a national securities ex-
16 change;

17 (B) interest rates, except interest rate de-
18 rivative instruments that—

19 (i) are based on a security or a group
20 or index of securities (other than govern-
21 ment securities or a group or index of gov-
22 ernment securities);

23 (ii) provide for the delivery of one or
24 more securities (other than government se-
25 curities); or

1 (iii) trade on a national securities ex-
2 change; or

3 (C) commodities, other rates, indices, or
4 other assets, except derivative instruments
5 that—

6 (i) are securities or that are based on
7 a group or index of securities (other than
8 government securities or a group or index
9 of government securities);

10 (ii) provide for the delivery of one or
11 more securities (other than government se-
12 curities); or

13 (iii) trade on a national securities ex-
14 change.

15 (b) CLASSIFICATION LIMITED.—Classification of a
16 particular product as an excepted banking product pursu-
17 ant to this section shall not be construed as finding or
18 implying that such product is or is not a security for any
19 purpose under the securities laws, or is or is not an ac-
20 count, agreement, contract, or transaction for any purpose
21 under the Commodity Exchange Act.

22 (c) INCORPORATED DEFINITIONS.—For purposes of
23 this section—

24 (1) the terms “bank”, “qualified investor”, and
25 “securities laws” have the same meanings given in

1 section 3(a) of the Securities Exchange Act of 1934,
2 as amended by this Act; and

3 (2) the term “government securities” has the
4 meaning given in section 3(a)(42) of such Act (as
5 amended by this Act), and, for purposes of this sec-
6 tion, commercial paper, bankers acceptances, and
7 commercial bills shall be treated in the same manner
8 as government securities.

9 **SEC. 207. ADDITIONAL DEFINITIONS.**

10 Section 3(a) of the Securities Exchange Act of 1934
11 is amended by adding at the end the following new para-
12 graphs:

13 “(54) DERIVATIVE INSTRUMENT.—

14 “(A) DEFINITION.—The term ‘derivative
15 instrument’ means any individually negotiated
16 contract, agreement, warrant, note, or option
17 that is based, in whole or in part, on the value
18 of, any interest in, or any quantitative measure
19 or the occurrence of any event relating to, one
20 or more commodities, securities, currencies, in-
21 terest or other rates, indices, or other assets,
22 but does not include an excepted banking prod-
23 uct, as defined in paragraphs (1) through (5) of
24 section 206(a) of the Financial Services Act of
25 1999.

1 “(B) CLASSIFICATION LIMITED.—Classi-
2 fication of a particular contract as a derivative
3 instrument pursuant to this paragraph shall not
4 be construed as finding or implying that such
5 instrument is or is not a security for any pur-
6 pose under the securities laws, or is or is not
7 an account, agreement, contract, or transaction
8 for any purpose under the Commodity Ex-
9 change Act.

10 “(55) QUALIFIED INVESTOR.—

11 “(A) DEFINITION.—For purposes of this
12 title, the term ‘qualified investor’ means—

13 “(i) any investment company reg-
14 istered with the Commission under section
15 8 of the Investment Company Act of 1940;

16 “(ii) any issuer eligible for an exclu-
17 sion from the definition of investment com-
18 pany pursuant to section 3(c)(7) of the In-
19 vestment Company Act of 1940;

20 “(iii) any bank (as defined in para-
21 graph (6) of this subsection), savings asso-
22 ciation (as defined in section 3(b) of the
23 Federal Deposit Insurance Act), broker,
24 dealer, insurance company (as defined in
25 section 2(a)(13) of the Securities Act of

1 1933), or business development company
2 (as defined in section 2(a)(48) of the In-
3 vestment Company Act of 1940);

4 “(iv) any small business investment
5 company licensed by the United States
6 Small Business Administration under sec-
7 tion 301 (c) or (d) of the Small Business
8 Investment Act of 1958;

9 “(v) any State sponsored employee
10 benefit plan, or any other employee benefit
11 plan, within the meaning of the Employee
12 Retirement Income Security Act of 1974,
13 other than an individual retirement ac-
14 count, if the investment decisions are made
15 by a plan fiduciary, as defined in section
16 3(21) of that Act, which is either a bank,
17 savings and loan association, insurance
18 company, or registered investment adviser;

19 “(vi) any trust whose purchases of se-
20 curities are directed by a person described
21 in clauses (i) through (v) of this subpara-
22 graph;

23 “(vii) any market intermediary ex-
24 empt under section 3(c)(2) of the Invest-
25 ment Company Act of 1940;

1 “(viii) any associated person of a
2 broker or dealer other than a natural per-
3 son;

4 “(ix) any foreign bank (as defined in
5 section 1(b)(7) of the International Bank-
6 ing Act of 1978);

7 “(x) the government of any foreign
8 country;

9 “(xi) any corporation, company, or
10 partnership that owns and invests on a dis-
11 cretionary basis, not less than \$10,000,000
12 in investments;

13 “(xii) any natural person who owns
14 and invests on a discretionary basis, not
15 less than \$10,000,000 in investments;

16 “(xiii) any government or political
17 subdivision, agency, or instrumentality of a
18 government who owns and invests on a dis-
19 cretionary basis not less than \$50,000,000
20 in investments; or

21 “(xiv) any multinational or supra-
22 national entity or any agency or instru-
23 mentality thereof.

24 “(B) ADDITIONAL AUTHORITY.—The Com-
25 mission may, by rule or order, define a ‘quali-

1 fied investor’ as any other person, taking into
2 consideration such factors as the financial so-
3 phistication of the person, net worth, and
4 knowledge and experience in financial mat-
5 ters.”.

6 **SEC. 208. GOVERNMENT SECURITIES DEFINED.**

7 Section 3(a)(42) of the Securities Exchange Act of
8 1934 (15 U.S.C. 78c(a)(42)) is amended—

9 (1) by striking “or” at the end of subparagraph
10 (C);

11 (2) by striking the period at the end of sub-
12 paragraph (D) and inserting “; or”; and

13 (3) by adding at the end the following new sub-
14 paragraph:

15 “(E) for purposes of sections 15, 15C, and
16 17A as applied to a bank, a qualified Canadian
17 government obligation as defined in section
18 5136 of the Revised Statutes of the United
19 States.”.

20 **SEC. 209. EFFECTIVE DATE.**

21 This subtitle shall take effect at the end of the 270-
22 day period beginning on the date of the enactment of this
23 Act.

1 **SEC. 210. RULE OF CONSTRUCTION.**

2 Nothing in this Act shall supersede, affect, or other-
3 wise limit the scope and applicability of the Commodity
4 Exchange Act (7 U.S.C. 1 et seq.).

5 **Subtitle B—Bank Investment**
6 **Company Activities**

7 **SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY**
8 **AFFILIATED BANK.**

9 (a) MANAGEMENT COMPANIES.—Section 17(f) of the
10 Investment Company Act of 1940 (15 U.S.C. 80a–17(f))
11 is amended—

12 (1) by redesignating paragraphs (1), (2), and
13 (3) as subparagraphs (A), (B), and (C), respectively;

14 (2) by striking “(f) Every registered” and in-
15 serting the following:

16 “(f) CUSTODY OF SECURITIES.—

17 “(1) Every registered”;

18 (3) by redesignating the second, third, fourth,
19 and fifth sentences of such subsection as paragraphs
20 (2) through (5), respectively, and indenting the left
21 margin of such paragraphs appropriately; and

22 (4) by adding at the end the following new
23 paragraph:

24 “(6) The Commission may adopt rules and reg-
25 ulations, and issue orders, consistent with the pro-
26 tection of investors, prescribing the conditions under

1 which a bank, or an affiliated person of a bank, ei-
2 ther of which is an affiliated person, promoter, orga-
3 nizer, or sponsor of, or principal underwriter for, a
4 registered management company may serve as custo-
5 dian of that registered management company.”.

6 (b) UNIT INVESTMENT TRUSTS.—Section 26 of the
7 Investment Company Act of 1940 (15 U.S.C. 80a–26) is
8 amended—

9 (1) by redesignating subsections (b) through (e)
10 as subsections (c) through (f), respectively; and

11 (2) by inserting after subsection (a) the fol-
12 lowing new subsection:

13 “(b) The Commission may adopt rules and regula-
14 tions, and issue orders, consistent with the protection of
15 investors, prescribing the conditions under which a bank,
16 or an affiliated person of a bank, either of which is an
17 affiliated person of a principal underwriter for, or deposi-
18 tor of, a registered unit investment trust, may serve as
19 trustee or custodian under subsection (a)(1).”.

20 (c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a)
21 of the Investment Company Act of 1940 (15 U.S.C. 80a–
22 35(a)) is amended—

23 (1) in paragraph (1), by striking “or” at the
24 end;

1 (2) in paragraph (2), by striking the period at
2 the end and inserting “; or”; and

3 (3) by inserting after paragraph (2) the fol-
4 lowing:

5 “(3) as custodian.”.

6 **SEC. 212. LENDING TO AN AFFILIATED INVESTMENT COM-**
7 **PANY.**

8 Section 17(a) of the Investment Company Act of
9 1940 (15 U.S.C. 80a-17(a)) is amended—

10 (1) by striking “or” at the end of paragraph
11 (2);

12 (2) by striking the period at the end of para-
13 graph (3) and inserting “; or”; and

14 (3) by adding at the end the following new
15 paragraph:

16 “(4) to loan money or other property to such
17 registered company, or to any company controlled by
18 such registered company, in contravention of such
19 rules, regulations, or orders as the Commission may
20 prescribe or issue consistent with the protection of
21 investors.”.

22 **SEC. 213. INDEPENDENT DIRECTORS.**

23 (a) IN GENERAL.—Section 2(a)(19)(A) of the Invest-
24 ment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)(A))
25 is amended—

1 (1) by striking clause (v) and inserting the fol-
2 lowing new clause:

3 “(v) any person or any affiliated per-
4 son of a person (other than a registered in-
5 vestment company) that, at any time dur-
6 ing the 6-month period preceding the date
7 of the determination of whether that per-
8 son or affiliated person is an interested
9 person, has executed any portfolio trans-
10 actions for, engaged in any principal trans-
11 actions with, or distributed shares for—

12 “(I) the investment company;

13 “(II) any other investment com-
14 pany having the same investment ad-
15 viser as such investment company or
16 holding itself out to investors as a re-
17 lated company for purposes of invest-
18 ment or investor services; or

19 “(III) any account over which the
20 investment company’s investment ad-
21 viser has brokerage placement discre-
22 tion,”;

23 (2) by redesignating clause (vi) as clause (vii);

24 and

1 (3) by inserting after clause (v) the following
2 new clause:

3 “(vi) any person or any affiliated per-
4 son of a person (other than a registered in-
5 vestment company) that, at any time dur-
6 ing the 6-month period preceding the date
7 of the determination of whether that per-
8 son or affiliated person is an interested
9 person, has loaned money or other prop-
10 erty to—

11 “(I) the investment company;

12 “(II) any other investment com-
13 pany having the same investment ad-
14 viser as such investment company or
15 holding itself out to investors as a re-
16 lated company for purposes of invest-
17 ment or investor services; or

18 “(III) any account for which the
19 investment company’s investment ad-
20 viser has borrowing authority,”.

21 (b) CONFORMING AMENDMENT.—Section
22 2(a)(19)(B) of the Investment Company Act of 1940 (15
23 U.S.C. 80a–2(a)(19)(B)) is amended—

24 (1) by striking clause (v) and inserting the fol-
25 lowing new clause:

1 “(v) any person or any affiliated per-
2 son of a person (other than a registered in-
3 vestment company) that, at any time dur-
4 ing the 6-month period preceding the date
5 of the determination of whether that per-
6 son or affiliated person is an interested
7 person, has executed any portfolio trans-
8 actions for, engaged in any principal trans-
9 actions with, or distributed shares for—

10 “(I) any investment company for
11 which the investment adviser or prin-
12 cipal underwriter serves as such;

13 “(II) any investment company
14 holding itself out to investors, for pur-
15 poses of investment or investor serv-
16 ices, as a company related to any in-
17 vestment company for which the in-
18 vestment adviser or principal under-
19 writer serves as such; or

20 “(III) any account over which the
21 investment adviser has brokerage
22 placement discretion,”;

23 (2) by redesignating clause (vi) as clause (vii);

24 and

1 (3) by inserting after clause (v) the following
2 new clause:

3 “(vi) any person or any affiliated per-
4 son of a person (other than a registered in-
5 vestment company) that, at any time dur-
6 ing the 6-month period preceding the date
7 of the determination of whether that per-
8 son or affiliated person is an interested
9 person, has loaned money or other prop-
10 erty to—

11 “(I) any investment company for
12 which the investment adviser or prin-
13 cipal underwriter serves as such;

14 “(II) any investment company
15 holding itself out to investors, for pur-
16 poses of investment or investor serv-
17 ices, as a company related to any in-
18 vestment company for which the in-
19 vestment adviser or principal under-
20 writer serves as such; or

21 “(III) any account for which the
22 investment adviser has borrowing au-
23 thority,”.

24 (c) AFFILIATION OF DIRECTORS.—Section 10(c) of
25 the Investment Company Act of 1940 (15 U.S.C. 80a—

1 10(c)) is amended by striking “bank, except” and insert-
2 ing “bank (together with its affiliates and subsidiaries) or
3 any one bank holding company (together with its affiliates
4 and subsidiaries) (as such terms are defined in section 2
5 of the Bank Holding Company Act of 1956), except”.

6 (d) EFFECTIVE DATE.—The amendments made by
7 this section shall take effect at the end of the 1-year period
8 beginning on the date of the enactment of this subtitle.

9 **SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

10 Section 35(a) of the Investment Company Act of
11 1940 (15 U.S.C. 80a–34(a)) is amended to read as fol-
12 lows:

13 “(a) MISREPRESENTATION OF GUARANTEES.—

14 “(1) IN GENERAL.—It shall be unlawful for any
15 person, issuing or selling any security of which a
16 registered investment company is the issuer, to rep-
17 resent or imply in any manner whatsoever that such
18 security or company—

19 “(A) has been guaranteed, sponsored, rec-
20 ommended, or approved by the United States,
21 or any agency, instrumentality or officer of the
22 United States;

23 “(B) has been insured by the Federal De-
24 posit Insurance Corporation; or

1 “(C) is guaranteed by or is otherwise an
2 obligation of any bank or insured depository in-
3 stitution.

4 “(2) DISCLOSURES.—Any person issuing or
5 selling the securities of a registered investment com-
6 pany that is advised by, or sold through, a bank
7 shall prominently disclose that an investment in the
8 company is not insured by the Federal Deposit In-
9 surance Corporation or any other government agen-
10 cy. The Commission may adopt rules and regula-
11 tions, and issue orders, consistent with the protec-
12 tion of investors, prescribing the manner in which
13 the disclosure under this paragraph shall be pro-
14 vided.

15 “(3) DEFINITIONS.—The terms ‘insured deposi-
16 tory institution’ and ‘appropriate Federal banking
17 agency’ have the same meanings given in section 3
18 of the Federal Deposit Insurance Act.”.

19 **SEC. 215. DEFINITION OF BROKER UNDER THE INVEST-**
20 **MENT COMPANY ACT OF 1940.**

21 Section 2(a)(6) of the Investment Company Act of
22 1940 (15 U.S.C. 80a-2(a)(6)) is amended to read as fol-
23 lows:

24 “(6) The term ‘broker’ has the same meaning
25 given in section 3 of the Securities Exchange Act of

1 1934, except that such term does not include any
2 person solely by reason of the fact that such person
3 is an underwriter for one or more investment compa-
4 nies.”.

5 **SEC. 216. DEFINITION OF DEALER UNDER THE INVEST-**
6 **MENT COMPANY ACT OF 1940.**

7 Section 2(a)(11) of the Investment Company Act of
8 1940 (15 U.S.C. 80a-2(a)(11)) is amended to read as fol-
9 lows:

10 “(11) The term ‘dealer’ has the same meaning
11 given in the Securities Exchange Act of 1934, but
12 does not include an insurance company or invest-
13 ment company.”.

14 **SEC. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINI-**
15 **TION OF INVESTMENT ADVISER FOR BANKS**
16 **THAT ADVISE INVESTMENT COMPANIES.**

17 (a) INVESTMENT ADVISER.—Section 202(a)(11)(A)
18 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-
19 2(a)(11)(A)) is amended by striking “investment com-
20 pany” and inserting “investment company, except that the
21 term ‘investment adviser’ includes any bank or bank hold-
22 ing company to the extent that such bank or bank holding
23 company serves or acts as an investment adviser to a reg-
24 istered investment company, but if, in the case of a bank,
25 such services or actions are performed through a sepa-

1 rately identifiable department or division, the department
2 or division, and not the bank itself, shall be deemed to
3 be the investment adviser”.

4 (b) SEPARATELY IDENTIFIABLE DEPARTMENT OR
5 DIVISION.—Section 202(a) of the Investment Advisers Act
6 of 1940 (15 U.S.C. 80b–2(a)) is amended by adding at
7 the end the following:

8 “(26) The term ‘separately identifiable depart-
9 ment or division’ of a bank means a unit—

10 “(A) that is under the direct supervision of
11 an officer or officers designated by the board of
12 directors of the bank as responsible for the day-
13 to-day conduct of the bank’s investment adviser
14 activities for one or more investment companies,
15 including the supervision of all bank employees
16 engaged in the performance of such activities;
17 and

18 “(B) for which all of the records relating
19 to its investment adviser activities are sepa-
20 rately maintained in or extractable from such
21 unit’s own facilities or the facilities of the bank,
22 and such records are so maintained or other-
23 wise accessible as to permit independent exam-
24 ination and enforcement by the Commission of
25 this Act or the Investment Company Act of

1 1940 and rules and regulations promulgated
2 under this Act or the Investment Company Act
3 of 1940.”.

4 **SEC. 218. DEFINITION OF BROKER UNDER THE INVEST-**
5 **MENT ADVISERS ACT OF 1940.**

6 Section 202(a)(3) of the Investment Advisers Act of
7 1940 (15 U.S.C. 80b–2(a)(3)) is amended to read as fol-
8 lows:

9 “(3) The term ‘broker’ has the same meaning
10 given in section 3 of the Securities Exchange Act of
11 1934.”.

12 **SEC. 219. DEFINITION OF DEALER UNDER THE INVEST-**
13 **MENT ADVISERS ACT OF 1940.**

14 Section 202(a)(7) of the Investment Advisers Act of
15 1940 (15 U.S.C. 80b–2(a)(7)) is amended to read as fol-
16 lows:

17 “(7) The term ‘dealer’ has the same meaning
18 given in section 3 of the Securities Exchange Act of
19 1934, but does not include an insurance company or
20 investment company.”.

21 **SEC. 220. INTERAGENCY CONSULTATION.**

22 The Investment Advisers Act of 1940 (15 U.S.C.
23 80b–1 et seq.) is amended by inserting after section 210
24 the following new section:

1 **“SEC. 210A. CONSULTATION.**

2 “(a) EXAMINATION RESULTS AND OTHER INFORMA-
3 TION.—

4 “(1) The appropriate Federal banking agency
5 shall provide the Commission upon request the re-
6 sults of any examination, reports, records, or other
7 information to which such agency may have access
8 with respect to the investment advisory activities—

9 “(A) of any—

10 “(i) bank holding company;

11 “(ii) bank; or

12 “(iii) separately identifiable depart-
13 ment or division of a bank,

14 that is registered under section 203 of this title;
15 and

16 “(B) in the case of a bank holding com-
17 pany or bank that has a subsidiary or a sepa-
18 rately identifiable department or division reg-
19 istered under that section, of such bank or bank
20 holding company.

21 “(2) The Commission shall provide to the ap-
22 propriate Federal banking agency upon request the
23 results of any examination, reports, records, or other
24 information with respect to the investment advisory
25 activities of any bank holding company, bank, or
26 separately identifiable department or division of a

1 bank, which is registered under section 203 of this
2 title.

3 “(b) EFFECT ON OTHER AUTHORITY.—Nothing in
4 this section shall limit in any respect the authority of the
5 appropriate Federal banking agency with respect to such
6 bank holding company, bank, or department or division
7 under any other provision of law.

8 “(c) DEFINITION.—For purposes of this section, the
9 term ‘appropriate Federal banking agency’ shall have the
10 same meaning given in section 3 of the Federal Deposit
11 Insurance Act.”.

12 **SEC. 221. TREATMENT OF BANK COMMON TRUST FUNDS.**

13 (a) SECURITIES ACT OF 1933.—Section 3(a)(2) of
14 the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is
15 amended by striking “or any interest or participation in
16 any common trust fund or similar fund maintained by a
17 bank exclusively for the collective investment and reinvest-
18 ment of assets contributed thereto by such bank in its ca-
19 pacity as trustee, executor, administrator, or guardian”
20 and inserting “or any interest or participation in any com-
21 mon trust fund or similar fund that is excluded from the
22 definition of the term ‘investment company’ under section
23 3(c)(3) of the Investment Company Act of 1940”.

24 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
25 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934

1 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as fol-
2 lows:

3 “(iii) any interest or participation in any
4 common trust fund or similar fund that is ex-
5 cluded from the definition of the term ‘invest-
6 ment company’ under section 3(c)(3) of the In-
7 vestment Company Act of 1940;”.

8 (c) INVESTMENT COMPANY ACT OF 1940.—Section
9 3(c)(3) of the Investment Company Act of 1940 (15
10 U.S.C. 80a–3(c)(3)) is amended by inserting before the
11 period the following: “, if—

12 “(A) such fund is employed by the bank
13 solely as an aid to the administration of trusts,
14 estates, or other accounts created and main-
15 tained for a fiduciary purpose;

16 “(B) except in connection with the ordi-
17 nary advertising of the bank’s fiduciary serv-
18 ices, interests in such fund are not—

19 “(i) advertised; or

20 “(ii) offered for sale to the general
21 public; and

22 “(C) fees and expenses charged by such
23 fund are not in contravention of fiduciary prin-
24 ciples established under applicable Federal or
25 State law”.

1 **SEC. 222. INVESTMENT ADVISERS PROHIBITED FROM HAV-**
2 **ING CONTROLLING INTEREST IN REG-**
3 **ISTERED INVESTMENT COMPANY.**

4 Section 15 of the Investment Company Act of 1940
5 (15 U.S.C. 80a-15) is amended by adding at the end the
6 following new subsection:

7 “(g) CONTROLLING INTEREST IN INVESTMENT COM-
8 PANY PROHIBITED.—

9 “(1) IN GENERAL.—If an investment adviser to
10 a registered investment company, or an affiliated
11 person of that investment adviser, holds a control-
12 ling interest in that registered investment company
13 in a trustee or fiduciary capacity, such person
14 shall—

15 “(A) if it holds the shares in a trustee or
16 fiduciary capacity with respect to any employee
17 benefit plan subject to the Employee Retirement
18 Income Security Act of 1974, transfer the
19 power to vote the shares of the investment com-
20 pany through to another person acting in a fi-
21 duciary capacity with respect to the plan who is
22 not an affiliated person of that investment ad-
23 viser or any affiliated person thereof; or

24 “(B) if it holds the shares in a trustee or
25 fiduciary capacity with respect to any person or
26 entity other than an employee benefit plan sub-

1 ject to the Employee Retirement Income Secu-
2 rity Act of 1974—

3 “(i) transfer the power to vote the
4 shares of the investment company through
5 to—

6 “(I) the beneficial owners of the
7 shares;

8 “(II) another person acting in a
9 fiduciary capacity who is not an affili-
10 ated person of that investment adviser
11 or any affiliated person thereof; or

12 “(III) any person authorized to
13 receive statements and information
14 with respect to the trust who is not an
15 affiliated person of that investment
16 adviser or any affiliated person there-
17 of;

18 “(ii) vote the shares of the investment
19 company held by it in the same proportion
20 as shares held by all other shareholders of
21 the investment company; or

22 “(iii) vote the shares of the invest-
23 ment company as otherwise permitted
24 under such rules, regulations, or orders as

1 the Commission may prescribe or issue
2 consistent with the protection of investors.

3 “(2) EXEMPTION.—Paragraph (1) shall not
4 apply to any investment adviser to a registered in-
5 vestment company, or any affiliated person of that
6 investment adviser, that holds shares of the invest-
7 ment company in a trustee or fiduciary capacity if
8 that registered investment company consists solely of
9 assets held in such capacities.

10 “(3) SAFE HARBOR.—No investment adviser to
11 a registered investment company or any affiliated
12 person of such investment adviser shall be deemed to
13 have acted unlawfully or to have breached a fidu-
14 ciary duty under State or Federal law solely by rea-
15 son of acting in accordance with clause (i), (ii), or
16 (iii) of paragraph (1)(B).”.

17 **SEC. 223. STATUTORY DISQUALIFICATION FOR BANK**
18 **WRONGDOING.**

19 Section 9(a) of the Investment Company Act of 1940
20 (15 U.S.C. 80a-9(a)) is amended in paragraphs (1) and
21 (2) by striking “securities dealer, transfer agent,” and in-
22 serting “securities dealer, bank, transfer agent,”.

23 **SEC. 224. CONFORMING CHANGE IN DEFINITION.**

24 Section 2(a)(5) of the Investment Company Act of
25 1940 (15 U.S.C. 80a-2(a)(5)) is amended by striking

1 “(A) a banking institution organized under the laws of the
2 United States” and inserting “(A) a depository institution
3 (as defined in section 3 of the Federal Deposit Insurance
4 Act) or a branch or agency of a foreign bank (as such
5 terms are defined in section 1(b) of the International
6 Banking Act of 1978)”.

7 **SEC. 225. CONFORMING AMENDMENT.**

8 Section 202 of the Investment Advisers Act of 1940
9 (15 U.S.C. 80b–2) is amended by adding at the end the
10 following new subsection:

11 “(c) CONSIDERATION OF PROMOTION OF EFFI-
12 CIENCY, COMPETITION, AND CAPITAL FORMATION.—
13 Whenever pursuant to this title the Commission is en-
14 gaged in rulemaking and is required to consider or deter-
15 mine whether an action is necessary or appropriate in the
16 public interest, the Commission shall also consider, in ad-
17 dition to the protection of investors, whether the action
18 will promote efficiency, competition, and capital forma-
19 tion.”.

20 **SEC. 226. CHURCH PLAN EXCLUSION.**

21 Section 3(c)(14) of the Investment Company Act of
22 1940 (15 U.S.C. 80a-3(c)(14)) is amended—

23 (1) by redesignating clauses (i) and (ii) of sub-
24 paragraph (B) as subclauses (I) and (II), respec-
25 tively;

1 (2) by redesignating subparagraphs (A) and
2 (B) as clauses (i) and (ii), respectively;

3 (3) by inserting “(A)” after “(14)”; and

4 (4) by adding at the end the following new sub-
5 paragraph:

6 “(B) If a registered investment company would
7 be excluded from the definition of investment com-
8 pany under this subsection but for the fact that
9 some of the company’s assets do not satisfy the con-
10 dition of subparagraph (A)(ii) of this paragraph,
11 then any investment adviser to the company or affili-
12 ated person of such investment adviser shall not be
13 subject to the requirements of section 15(g)(1)(B)
14 with respect to shares of the investment company.”.

15 **SEC. 227. EFFECTIVE DATE.**

16 This subtitle shall take effect 90 days after the date
17 of the enactment of this Act.

1 **Subtitle C—Securities and Ex-**
 2 **change Commission Supervision**
 3 **of Investment Bank Holding**
 4 **Companies**

5 **SEC. 231. SUPERVISION OF INVESTMENT BANK HOLDING**
 6 **COMPANIES BY THE SECURITIES AND EX-**
 7 **CHANGE COMMISSION.**

8 (a) AMENDMENT.—Section 17 of the Securities Ex-
 9 change Act of 1934 (15 U.S.C. 78q) is amended—

10 (1) by redesignating subsection (i) as subsection
 11 (k); and

12 (2) by inserting after subsection (h) the fol-
 13 lowing new subsection:

14 “(i) INVESTMENT BANK HOLDING COMPANIES.—

15 “(1) ELECTIVE SUPERVISION OF AN INVEST-
 16 MENT BANK HOLDING COMPANY NOT HAVING A
 17 BANK OR SAVINGS ASSOCIATION AFFILIATE.—

18 “(A) IN GENERAL.—An investment bank
 19 holding company that is not—

20 “(i) an affiliate of a wholesale finan-
 21 cial institution, an insured bank (other
 22 than an institution described in subpara-
 23 graph (D), (F), or (G) of section 2(c)(2),
 24 or held under section 4(f), of the Bank

1 Holding Company Act of 1956), or a sav-
2 ings association;

3 “(ii) a foreign bank, foreign company,
4 or company that is described in section
5 8(a) of the International Banking Act of
6 1978; or

7 “(iii) a foreign bank that controls, di-
8 rectly or indirectly, a corporation chartered
9 under section 25A of the Federal Reserve
10 Act,

11 may elect to become supervised by filing with
12 the Commission a notice of intention to become
13 supervised, pursuant to subparagraph (B) of
14 this paragraph. Any investment bank holding
15 company filing such a notice shall be supervised
16 in accordance with this section and comply with
17 the rules promulgated by the Commission appli-
18 cable to supervised investment bank holding
19 companies.

20 “(B) NOTIFICATION OF STATUS AS A SU-
21 PERVISED INVESTMENT BANK HOLDING COM-
22 PANY.—An investment bank holding company
23 that elects under subparagraph (A) to become
24 supervised by the Commission shall file with the
25 Commission a written notice of intention to be-

1 come supervised by the Commission in such
2 form and containing such information and doc-
3 uments concerning such investment bank hold-
4 ing company as the Commission, by rule, may
5 prescribe as necessary or appropriate in fur-
6 therance of the purposes of this section. Unless
7 the Commission finds that such supervision is
8 not necessary or appropriate in furtherance of
9 the purposes of this section, such supervision
10 shall become effective 45 days after the date of
11 receipt of such written notice by the Commis-
12 sion or within such shorter time period as the
13 Commission, by rule or order, may determine.

14 “(2) ELECTION NOT TO BE SUPERVISED BY
15 THE COMMISSION AS AN INVESTMENT BANK HOLD-
16 ING COMPANY.—

17 “(A) VOLUNTARY WITHDRAWAL.—A su-
18 pervised investment bank holding company that
19 is supervised pursuant to paragraph (1) may,
20 upon such terms and conditions as the Commis-
21 sion deems necessary or appropriate, elect not
22 to be supervised by the Commission by filing a
23 written notice of withdrawal from Commission
24 supervision. Such notice shall not become effec-
25 tive until 1 year after receipt by the Commis-

1 sion, or such shorter or longer period as the
2 Commission deems necessary or appropriate to
3 ensure effective supervision of the material
4 risks to the supervised investment bank holding
5 company and to the affiliated broker or dealer,
6 or to prevent evasion of the purposes of this
7 section.

8 “(B) DISCONTINUATION OF COMMISSION
9 SUPERVISION.—If the Commission finds that
10 any supervised investment bank holding com-
11 pany that is supervised pursuant to paragraph
12 (1) is no longer in existence or has ceased to be
13 an investment bank holding company, or if the
14 Commission finds that continued supervision of
15 such a supervised investment bank holding com-
16 pany is not consistent with the purposes of this
17 section, the Commission may discontinue the
18 supervision pursuant to a rule or order, if any,
19 promulgated by the Commission under this sec-
20 tion.

21 “(3) SUPERVISION OF INVESTMENT BANK
22 HOLDING COMPANIES.—

23 “(A) RECORDKEEPING AND REPORTING.—

24 “(i) IN GENERAL.—Every supervised
25 investment bank holding company and

1 each affiliate thereof shall make and keep
2 for prescribed periods such records, furnish
3 copies thereof, and make such reports, as
4 the Commission may require by rule, in
5 order to keep the Commission informed as
6 to—

7 “(I) the company’s or affiliate’s
8 activities, financial condition, policies,
9 systems for monitoring and control-
10 ling financial and operational risks,
11 and transactions and relationships be-
12 tween any broker or dealer affiliate of
13 the supervised investment bank hold-
14 ing company; and

15 “(II) the extent to which the
16 company or affiliate has complied with
17 the provisions of this Act and regula-
18 tions prescribed and orders issued
19 under this Act.

20 “(ii) FORM AND CONTENTS.—Such
21 records and reports shall be prepared in
22 such form and according to such specifica-
23 tions (including certification by an inde-
24 pendent public accountant), as the Com-
25 mission may require and shall be provided

1 promptly at any time upon request by the
2 Commission. Such records and reports may
3 include—

4 “(I) a balance sheet and income
5 statement;

6 “(II) an assessment of the con-
7 solidated capital of the supervised in-
8 vestment bank holding company;

9 “(III) an independent auditor’s
10 report attesting to the supervised in-
11 vestment bank holding company’s
12 compliance with its internal risk man-
13 agement and internal control objec-
14 tives; and

15 “(IV) reports concerning the ex-
16 tent to which the company or affiliate
17 has complied with the provisions of
18 this title and any regulations pre-
19 scribed and orders issued under this
20 title.

21 “(B) USE OF EXISTING REPORTS.—

22 “(i) IN GENERAL.—The Commission
23 shall, to the fullest extent possible, accept
24 reports in fulfillment of the requirements
25 under this paragraph that the supervised

1 investment bank holding company or its af-
2 filiates have been required to provide to
3 another appropriate regulatory agency or
4 self-regulatory organization.

5 “(ii) AVAILABILITY.—A supervised in-
6 vestment bank holding company or an af-
7 filiate of such company shall provide to the
8 Commission, at the request of the Commis-
9 sion, any report referred to in clause (i).

10 “(C) EXAMINATION AUTHORITY.—

11 “(i) FOCUS OF EXAMINATION AU-
12 THORITY.—The Commission may make ex-
13 aminations of any supervised investment
14 bank holding company and any affiliate of
15 such company in order to—

16 “(I) inform the Commission
17 regarding—

18 “(aa) the nature of the oper-
19 ations and financial condition of
20 the supervised investment bank
21 holding company and its affili-
22 ates;

23 “(bb) the financial and oper-
24 ational risks within the super-
25 vised investment bank holding

1 company that may affect any
2 broker or dealer controlled by
3 such supervised investment bank
4 holding company; and

5 “(cc) the systems of the su-
6 pervised investment bank holding
7 company and its affiliates for
8 monitoring and controlling those
9 risks; and

10 “(II) monitor compliance with
11 the provisions of this subsection, pro-
12 visions governing transactions and re-
13 lationships between any broker or
14 dealer affiliated with the supervised
15 investment bank holding company and
16 any of the company’s other affiliates,
17 and applicable provisions of sub-
18 chapter II of chapter 53, title 31,
19 United States Code (commonly re-
20 ferred to as the ‘Bank Secrecy Act’)
21 and regulations thereunder.

22 “(ii) RESTRICTED FOCUS OF EXAMI-
23 NATIONS.—The Commission shall limit the
24 focus and scope of any examination of a

1 supervised investment bank holding com-
2 pany to—

3 “(I) the company; and

4 “(II) any affiliate of the company
5 that, because of its size, condition, or
6 activities, the nature or size of the
7 transactions between such affiliate
8 and any affiliated broker or dealer, or
9 the centralization of functions within
10 the holding company system, could, in
11 the discretion of the Commission,
12 have a materially adverse effect on the
13 operational or financial condition of
14 the broker or dealer.

15 “(iii) DEFERENCE TO OTHER EXAMI-
16 NATIONS.—For purposes of this subpara-
17 graph, the Commission shall, to the fullest
18 extent possible, use the reports of examina-
19 tion of an institution described in subpara-
20 graph (D), (F), or (G) of section 2(c)(2),
21 or held under section 4(f), of the Bank
22 Holding Company Act of 1956 made by
23 the appropriate regulatory agency, or of a
24 licensed insurance company made by the
25 appropriate State insurance regulator.

1 “(4) HOLDING COMPANY CAPITAL.—

2 “(A) AUTHORITY.—If the Commission
3 finds that it is necessary to adequately super-
4 vise investment bank holding companies and
5 their broker or dealer affiliates consistent with
6 the purposes of this subsection, the Commission
7 may adopt capital adequacy rules for supervised
8 investment bank holding companies.

9 “(B) METHOD OF CALCULATION.—In de-
10 veloping rules under this paragraph:

11 “(i) DOUBLE LEVERAGE.—The Com-
12 mission shall consider the use by the su-
13 pervised investment bank holding company
14 of debt and other liabilities to fund capital
15 investments in affiliates.

16 “(ii) NO UNWEIGHTED CAPITAL
17 RATIO.—The Commission shall not impose
18 under this section a capital ratio that is
19 not based on appropriate risk-weighting
20 considerations.

21 “(iii) NO CAPITAL REQUIREMENT ON
22 REGULATED ENTITIES.—The Commission
23 shall not, by rule, regulation, guideline,
24 order or otherwise, impose any capital ade-
25 quacy provision on a nonbanking affiliate

1 (other than a broker or dealer) that is in
2 compliance with applicable capital require-
3 ments of another Federal regulatory au-
4 thority or State insurance authority.

5 “(iv) APPROPRIATE EXCLUSIONS.—
6 The Commission shall take full account of
7 the applicable capital requirements of an-
8 other Federal regulatory authority or State
9 insurance regulator.

10 “(C) INTERNAL RISK MANAGEMENT MOD-
11 ELS.—The Commission may incorporate inter-
12 nal risk management models into its capital
13 adequacy rules for supervised investment bank
14 holding companies.

15 “(5) FUNCTIONAL REGULATION OF BANKING
16 AND INSURANCE ACTIVITIES OF SUPERVISED IN-
17 VESTMENT BANK HOLDING COMPANIES.—The Com-
18 mission shall defer to—

19 “(A) the appropriate regulatory agency
20 with regard to all interpretations of, and the
21 enforcement of, applicable banking laws relating
22 to the activities, conduct, ownership, and oper-
23 ations of banks, and institutions described in
24 subparagraph (D), (F), and (G) of section

1 2(c)(2), or held under section 4(f), of the Bank
2 Holding Company Act of 1956; and

3 “(B) the appropriate State insurance regu-
4 lators with regard to all interpretations of, and
5 the enforcement of, applicable State insurance
6 laws relating to the activities, conduct, and op-
7 erations of insurance companies and insurance
8 agents.

9 “(6) DEFINITIONS.—For purposes of this sub-
10 section:

11 “(A) The term ‘investment bank holding
12 company’ means—

13 “(i) any person other than a natural
14 person that owns or controls one or more
15 brokers or dealers; and

16 “(ii) the associated persons of the in-
17 vestment bank holding company.

18 “(B) The term ‘supervised investment
19 bank holding company’ means any investment
20 bank holding company that is supervised by the
21 Commission pursuant to this subsection.

22 “(C) The terms ‘affiliate’, ‘bank’, ‘bank
23 holding company’, ‘company’, ‘control’, ‘savings
24 association’, and ‘wholesale financial institution’
25 have the same meanings given in section 2 of

1 the Bank Holding Company Act of 1956 (12
2 U.S.C. 1841).

3 “(D) The term ‘insured bank’ has the
4 same meaning given in section 3 of the Federal
5 Deposit Insurance Act.

6 “(E) The term ‘foreign bank’ has the same
7 meaning given in section 1(b)(7) of the Inter-
8 national Banking Act of 1978.

9 “(F) The terms ‘person associated with an
10 investment bank holding company’ and ‘associ-
11 ated person of an investment bank holding com-
12 pany’ mean any person directly or indirectly
13 controlling, controlled by, or under common
14 control with, an investment bank holding com-
15 pany.”.

16 “(j) AUTHORITY TO LIMIT DISCLOSURE OF INFOR-
17 MATION.—Notwithstanding any other provision of law, the
18 Commission shall not be compelled to disclose any infor-
19 mation required to be reported under subsection (h) or
20 (i) or any information supplied to the Commission by any
21 domestic or foreign regulatory agency that relates to the
22 financial or operational condition of any associated person
23 of a broker or dealer, investment bank holding company,
24 or any affiliate of an investment bank holding company.
25 Nothing in this subsection shall authorize the Commission

1 to withhold information from Congress, or prevent the
 2 Commission from complying with a request for informa-
 3 tion from any other Federal department or agency or any
 4 self-regulatory organization requesting the information for
 5 purposes within the scope of its jurisdiction, or complying
 6 with an order of a court of the United States in an action
 7 brought by the United States or the Commission. For pur-
 8 poses of section 552 of title 5, United States Code, this
 9 subsection shall be considered a statute described in sub-
 10 section (b)(3)(B) of such section 552. In prescribing regu-
 11 lations to carry out the requirements of this subsection,
 12 the Commission shall designate information described in
 13 or obtained pursuant to subparagraphs (A), (B), and (C)
 14 of subsection (i)(5) as confidential information for pur-
 15 poses of section 24(b)(2) of this title.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) Section 3(a)(34) of the Securities Exchange
 18 Act of 1934 (15 U.S.C. 78c(a)(34)) is amended by
 19 adding at the end the following new subparagraph:

20 “(H) When used with respect to an institu-
 21 tion described in subparagraph (D), (F), or (G)
 22 of section 2(c)(2), or held under section 4(f), of
 23 the Bank Holding Company Act of 1956—

24 “(i) the Comptroller of the Currency,
 25 in the case of a national bank or a bank

1 in the District of Columbia examined by
2 the Comptroller of the Currency;

3 “(ii) the Board of Governors of the
4 Federal Reserve System, in the case of a
5 State member bank of the Federal Reserve
6 System or any corporation chartered under
7 section 25A of the Federal Reserve Act;

8 “(iii) the Federal Deposit Insurance
9 Corporation, in the case of any other bank
10 the deposits of which are insured in ac-
11 cordance with the Federal Deposit Insur-
12 ance Act; or

13 “(iv) the Commission in the case of all
14 other such institutions.”.

15 (2) Section 1112(e) of the Right to Financial
16 Privacy Act of 1978 (12 U.S.C. 3412(e)) is
17 amended—

18 (A) by striking “this title” and inserting
19 “law”; and

20 (B) by inserting “, examination reports”
21 after “financial records”.

1 **Subtitle D—Disclosure of Customer**
2 **Costs of Acquiring Financial**
3 **Products**

4 **SEC. 241. IMPROVED AND CONSISTENT DISCLOSURE.**

5 (a) REVISED REGULATIONS REQUIRED.—Within 1
6 year after the date of the enactment of this Act, each Fed-
7 eral financial regulatory authority shall prescribe rules, or
8 revisions to its rules, to improve the accuracy, simplicity,
9 and completeness, and to make more consistent, the dis-
10 closure of information by persons subject to the jurisdic-
11 tion of such regulatory authority concerning any commis-
12 sions, fees, or other costs incurred by customers in the
13 acquisition of financial products.

14 (b) CONSULTATION.—In prescribing rules and revi-
15 sions under subsection (a), the Federal financial regu-
16 latory authorities shall consult with each other and with
17 appropriate State financial regulatory authorities.

18 (c) CONSIDERATION OF EXISTING DISCLOSURES.—
19 In prescribing rules and revisions under subsection (a),
20 the Federal financial regulatory authorities shall consider
21 the sufficiency and appropriateness of then existing laws
22 and rules applicable to persons subject to their jurisdic-
23 tion, and may prescribe exemptions from the rules and re-
24 visions required by subsection (a) to the extent appro-

1 puate in light of the objective of this section to increase
2 the consistency of disclosure practices.

3 (d) ENFORCEMENT.—Any rule prescribed by a Fed-
4 eral financial regulatory authority pursuant to this section
5 shall, for purposes of enforcement, be treated as a rule
6 prescribed by such regulatory authority pursuant to the
7 statute establishing such regulatory authority’s jurisdic-
8 tion over the persons to whom such rule applies.

9 (e) DEFINITION.—As used in this section, the term
10 “Federal financial regulatory authority” means the Board
11 of Governors of the Federal Reserve System, the Securi-
12 ties and Exchange Commission, the Comptroller of the
13 Currency, the Federal Deposit Insurance Corporation, the
14 Commodity Futures Trading Commission, and any self-
15 regulatory organization under the supervision of any of
16 the foregoing.

17 **Subtitle E—Banks and Bank**
18 **Holding Companies**

19 **SEC. 251. CONSULTATION.**

20 (a) IN GENERAL.—The Securities and Exchange
21 Commission shall consult and coordinate comments with
22 the appropriate Federal banking agency before taking any
23 action or rendering any opinion with respect to the man-
24 ner in which any insured depository institution or deposi-
25 tory institution holding company reports loan loss reserves

1 in its financial statement, including the amount of any
2 such loan loss reserve.

3 (b) DEFINITIONS.—For purposes of subsection (a),
4 the terms “insured depository institution”, “depository in-
5 stitution holding company”, and “appropriate Federal
6 banking agency” have the same meaning as in section 3
7 of the Federal Deposit Insurance Act.

8 **TITLE III—INSURANCE**
9 **Subtitle A—State Regulation of**
10 **Insurance**

11 **SEC. 301. STATE REGULATION OF THE BUSINESS OF INSUR-**
12 **ANCE.**

13 The Act entitled “An Act to express the intent of the
14 Congress with reference to the regulation of the business
15 of insurance” and approved March 9, 1945 (15 U.S.C.
16 1011 et seq.), commonly referred to as the “McCarran-
17 Ferguson Act” remains the law of the United States.

18 **SEC. 302. MANDATORY INSURANCE LICENSING REQUIRE-**
19 **MENTS.**

20 No person shall engage in the business of insurance
21 in a State as principal or agent unless such person is li-
22 censed as required by the appropriate insurance regulator
23 of such State in accordance with the relevant State insur-
24 ance law, subject to section 104.

1 **SEC. 303. FUNCTIONAL REGULATION OF INSURANCE.**

2 The insurance activities of any person (including a
3 national bank exercising its power to act as agent under
4 the eleventh undesignated paragraph of section 13 of the
5 Federal Reserve Act) shall be functionally regulated by the
6 States, subject to section 104.

7 **SEC. 304. INSURANCE UNDERWRITING IN NATIONAL**
8 **BANKS.**

9 (a) IN GENERAL.—Except as provided in section 305,
10 a national bank and the subsidiaries of a national bank
11 may not provide insurance in a State as principal except
12 that this prohibition shall not apply to authorized prod-
13 ucts.

14 (b) AUTHORIZED PRODUCTS.—For the purposes of
15 this section, a product is authorized if—

16 (1) as of January 1, 1999, the Comptroller of
17 the Currency had determined in writing that na-
18 tional banks may provide such product as principal,
19 or national banks were in fact lawfully providing
20 such product as principal;

21 (2) no court of relevant jurisdiction had, by
22 final judgment, overturned a determination of the
23 Comptroller of the Currency that national banks
24 may provide such product as principal; and

25 (3) the product is not title insurance, or an an-
26 nuity contract the income of which is subject to tax

1 treatment under section 72 of the Internal Revenue
2 Code of 1986.

3 (c) DEFINITION.—For purposes of this section, the
4 term “insurance” means—

5 (1) any product regulated as insurance as of
6 January 1, 1999, in accordance with the relevant
7 State insurance law, in the State in which the prod-
8 uct is provided;

9 (2) any product first offered after January 1,
10 1999, which—

11 (A) a State insurance regulator determines
12 shall be regulated as insurance in the State in
13 which the product is provided because the prod-
14 uct insures, guarantees, or indemnifies against
15 liability, loss of life, loss of health, or loss
16 through damage to or destruction of property,
17 including, but not limited to, surety bonds, life
18 insurance, health insurance, title insurance, and
19 property and casualty insurance (such as pri-
20 vate passenger or commercial automobile,
21 homeowners, mortgage, commercial multiperil,
22 general liability, professional liability, workers’
23 compensation, fire and allied lines, farm owners
24 multiperil, aircraft, fidelity, surety, medical

malpractice, ocean marine, inland marine, and boiler and machinery insurance); and

(B) is not a product or service of a bank that is—

(i) a deposit product;

(ii) a loan, discount, letter of credit, or other extension of credit;

(iii) a trust or other fiduciary service;

(iv) a qualified financial contract (as defined in or determined pursuant to section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act); or

(v) a financial guaranty, except that this subparagraph (B) shall not apply to a product that includes an insurance component such that if the product is offered or proposed to be offered by the bank as principal—

(I) it would be treated as a life insurance contract under section 7702 of the Internal Revenue Code of 1986; or

(II) in the event that the product is not a letter of credit or other similar extension of credit, a qualified fi-

1 nancial contract, or a financial guar-
2 anty, it would qualify for treatment
3 for losses incurred with respect to
4 such product under section 832(b)(5)
5 of the Internal Revenue Code of 1986,
6 if the bank were subject to tax as an
7 insurance company under section 831
8 of that Code; or

9 (3) any annuity contract, the income on which
10 is subject to tax treatment under section 72 of the
11 Internal Revenue Code of 1986.

12 **SEC. 305. TITLE INSURANCE ACTIVITIES OF NATIONAL**
13 **BANKS AND THEIR AFFILIATES.**

14 (a) GENERAL PROHIBITION.—No national bank, and
15 no subsidiary of a national bank, may engage in any activ-
16 ity involving the underwriting or sale of title insurance.

17 (b) NONDISCRIMINATION PARITY EXCEPTION.—

18 (1) IN GENERAL.—Notwithstanding any other
19 provision of law (including section 104 of this Act),
20 in the case of any State in which banks organized
21 under the laws of such State are authorized to sell
22 title insurance as agency, a national bank and a sub-
23 sidiary of a national bank may sell title insurance as
24 agent in such State, but only in the same manner,
25 to the same extent, and under the same restrictions

1 as such State banks are authorized to sell title in-
2 surance as agent in such State.

3 (2) COORDINATION WITH “WILDCARD” PROVI-
4 SION.—A State law which authorizes State banks to
5 engage in any activities in such State in which a na-
6 tional bank may engage shall not be treated as a
7 statute which authorizes State banks to sell title in-
8 surance as agent, for purposes of paragraph (1).

9 (c) GRANDFATHERING WITH CONSISTENT REGULA-
10 TION.—

11 (1) IN GENERAL.—Except as provided in para-
12 graphs (2) and (3) and notwithstanding subsections
13 (a) and (b), a national bank, and a subsidiary of a
14 national bank, may conduct title insurance activities
15 which such national bank or subsidiary was actively
16 and lawfully conducting before the date of the enact-
17 ment of this Act.

18 (2) INSURANCE AFFILIATE.—In the case of a
19 national bank which has an affiliate which provides
20 insurance as principal and is not a subsidiary of the
21 bank, the national bank and any subsidiary of the
22 national bank may not engage in the underwriting of
23 title insurance pursuant to paragraph (1).

24 (3) INSURANCE SUBSIDIARY.—In the case of a
25 national bank which has a subsidiary which provides

1 insurance as principal and has no affiliate other
2 than a subsidiary which provides insurance as prin-
3 cipal, the national bank may not directly engage in
4 any activity involving the underwriting of title insur-
5 ance.

6 (d) “AFFILIATE” AND “SUBSIDIARY” DEFINED.—
7 For purposes of this section, the terms “affiliate” and
8 “subsidiary” have the same meanings as in section 2 of
9 the Bank Holding Company Act of 1956.

10 (e) RULE OF CONSTRUCTION.—No provision of this
11 Act or any other Federal law shall be construed as super-
12 seding or affecting a State law which was in effect before
13 the date of the enactment of this Act and which prohibits
14 title insurance from being offered, provided, or sold in
15 such State, or from being underwritten with respect to
16 real property in such State, by any person whatsoever.

17 **SEC. 306. EXPEDITED AND EQUALIZED DISPUTE RESOLU-**
18 **TION FOR FEDERAL REGULATORS.**

19 (a) FILING IN COURT OF APPEALS.—In the case of
20 a regulatory conflict between a State insurance regulator
21 and a Federal regulator as to whether any product is or
22 is not insurance, as defined in section 304(c) of this Act,
23 or whether a State statute, regulation, order, or interpre-
24 tation regarding any insurance sales or solicitation activity
25 is properly treated as preempted under Federal law, either

1 regulator may seek expedited judicial review of such deter-
2 mination by the United States Court of Appeals for the
3 circuit in which the State is located or in the United
4 States Court of Appeals for the District of Columbia Cir-
5 cuit by filing a petition for review in such court.

6 (b) EXPEDITED REVIEW.—The United States Court
7 of Appeals in which a petition for review is filed in accord-
8 ance with subsection (a) shall complete all action on such
9 petition, including rendering a judgment, before the end
10 of the 60-day period beginning on the date on which such
11 petition is filed, unless all parties to such proceeding agree
12 to any extension of such period.

13 (c) SUPREME COURT REVIEW.—Any request for cer-
14 tiorari to the Supreme Court of the United States of any
15 judgment of a United States Court of Appeals with respect
16 to a petition for review under this section shall be filed
17 with the Supreme Court of the United States as soon as
18 practicable after such judgment is issued.

19 (d) STATUTE OF LIMITATION.—No petition may be
20 filed under this section challenging an order, ruling, deter-
21 mination, or other action of a Federal regulator or State
22 insurance regulator after the later of—

23 (1) the end of the 12-month period beginning
24 on the date on which the first public notice is made

1 of such order, ruling, determination or other action
 2 in its final form; or

3 (2) the end of the 6-month period beginning on
 4 the date on which such order, ruling, determination,
 5 or other action takes effect.

6 (e) STANDARD OF REVIEW.—The court shall decide
 7 a petition filed under this section based on its review on
 8 the merits of all questions presented under State and Fed-
 9 eral law, including the nature of the product or activity
 10 and the history and purpose of its regulation under State
 11 and Federal law, without unequal deference.

12 **SEC. 307. CONSUMER PROTECTION REGULATIONS.**

13 The Federal Deposit Insurance Act (12 U.S.C. 1811
 14 et seq.) is amended by inserting after section 46 (as added
 15 by section 122(b) of this Act) the following new section:

16 **“SEC. 47. CONSUMER PROTECTION REGULATIONS.**

17 **“(a) REGULATIONS REQUIRED.—**

18 **“(1) IN GENERAL.—**The Federal banking agen-
 19 cies shall prescribe and publish in final form, before
 20 the end of the 1-year period beginning on the date
 21 of the enactment of the Financial Services Act of
 22 1999, consumer protection regulations (which the
 23 agencies jointly determine to be appropriate) that—

24 **“(A)** apply to retail sales practices, solici-
 25 tations, advertising, or offers of any insurance

1 product by any insured depository institution or
2 wholesale financial institution or any person
3 who is engaged in such activities at an office of
4 the institution or on behalf of the institution;
5 and

6 “(B) are consistent with the requirements
7 of this Act and provide such additional protec-
8 tions for consumers to whom such sales, solici-
9 tations, advertising, or offers are directed as
10 the agency determines to be appropriate.

11 “(2) APPLICABILITY TO SUBSIDIARIES.—The
12 regulations prescribed pursuant to paragraph (1)
13 shall extend such protections to any subsidiaries of
14 an insured depository institution, as deemed appro-
15 priate by the regulators referred to in paragraph (3),
16 where such extension is determined to be necessary
17 to ensure the consumer protections provided by this
18 section.

19 “(3) CONSULTATION AND JOINT REGULA-
20 TIONS.—The Federal banking agencies shall consult
21 with each other and prescribe joint regulations pur-
22 suant to paragraph (1), after consultation with the
23 State insurance regulators, as appropriate.

24 “(b) SALES PRACTICES.—The regulations prescribed
25 pursuant to subsection (a) shall include anticoercion rules

1 applicable to the sale of insurance products which prohibit
2 an insured depository institution from engaging in any
3 practice that would lead a consumer to believe an exten-
4 sion of credit, in violation of section 106(b) of the Bank
5 Holding Company Act Amendments of 1970, is condi-
6 tional upon—

7 “(1) the purchase of an insurance product from
8 the institution or any of its affiliates; or

9 “(2) an agreement by the consumer not to ob-
10 tain, or a prohibition on the consumer from obtain-
11 ing, an insurance product from an unaffiliated enti-
12 ty.

13 “(c) DISCLOSURES AND ADVERTISING.—The regula-
14 tions prescribed pursuant to subsection (a) shall include
15 the following provisions relating to disclosures and adver-
16 tising in connection with the initial purchase of an insur-
17 ance product:

18 “(1) DISCLOSURES.—

19 “(A) IN GENERAL.—Requirements that the
20 following disclosures be made orally and in writ-
21 ing before the completion of the initial sale and,
22 in the case of clause (iii), at the time of applica-
23 tion for an extension of credit:

24 “(i) UNINSURED STATUS.—As appro-
25 priate, the product is not insured by the

1 Federal Deposit Insurance Corporation,
2 the United States Government, or the in-
3 sured depository institution.

4 “(ii) INVESTMENT RISK.—In the case
5 of a variable annuity or other insurance
6 product which involves an investment risk,
7 that there is an investment risk associated
8 with the product, including possible loss of
9 value.

10 “(iii) COERCION.—The approval of an
11 extension of credit may not be conditioned
12 on—

13 “(I) the purchase of an insurance
14 product from the institution in which
15 the application for credit is pending or
16 any of its affiliates or subsidiaries; or

17 “(II) an agreement by the con-
18 sumer not to obtain, or a prohibition
19 on the consumer from obtaining, an
20 insurance product from an unaffili-
21 ated entity.

22 “(B) MAKING DISCLOSURE READILY UN-
23 DERSTANDABLE.—Regulations prescribed under
24 subparagraph (A) shall encourage the use of
25 disclosure that is conspicuous, simple, direct,

1 and readily understandable, such as the fol-
2 lowing:

3 “(i) ‘NOT FDIC—INSURED’.

4 “(ii) ‘NOT GUARANTEED BY THE
5 BANK’.

6 “(iii) ‘MAY GO DOWN IN VALUE’.

7 “(iv) ‘NOT INSURED BY ANY
8 GOVERNMENT AGENCY’.

9 “(C) ADJUSTMENTS FOR ALTERNATIVE
10 METHODS OF PURCHASE.—In prescribing the
11 requirements under subparagraphs (A) and
12 (D), necessary adjustments shall be made for
13 purchase in person, by telephone, or by elec-
14 tronic media to provide for the most appro-
15 priate and complete form of disclosure and ac-
16 knowledgments.

17 “(D) CONSUMER ACKNOWLEDGMENT.—A
18 requirement that an insured depository institu-
19 tion shall require any person selling an insur-
20 ance product at any office of, or on behalf of,
21 the institution to obtain, at the time a con-
22 sumer receives the disclosures required under
23 this paragraph or at the time of the initial pur-
24 chase by the consumer of such product, an ac-
25 knowledgment by such consumer of the receipt

1 of the disclosure required under this subsection
2 with respect to such product.

3 “(2) PROHIBITION ON MISREPRESENTA-
4 TIONS.—A prohibition on any practice, or any adver-
5 tising, at any office of, or on behalf of, the insured
6 depository institution, or any subsidiary as appro-
7 priate, which could mislead any person or otherwise
8 cause a reasonable person to reach an erroneous be-
9 lief with respect to—

10 “(A) the uninsured nature of any insur-
11 ance product sold, or offered for sale, by the in-
12 stitution or any subsidiary of the institution;

13 “(B) in the case of a variable annuity or
14 other insurance product that involves an invest-
15 ment risk, the investment risk associated with
16 any such product; or

17 “(C) in the case of an institution or sub-
18 sidiary at which insurance products are sold or
19 offered for sale, the fact that—

20 “(i) the approval of an extension of
21 credit to a customer by the institution or
22 subsidiary may not be conditioned on the
23 purchase of an insurance product by such
24 customer from the institution or sub-
25 sidiary; and

1 “(ii) the customer is free to purchase
2 the insurance product from another
3 source.”.

4 “(d) SEPARATION OF BANKING AND NONBANKING
5 ACTIVITIES.—

6 “(1) REGULATIONS REQUIRED.—The regula-
7 tions prescribed pursuant to subsection (a) shall in-
8 clude such provisions as the Federal banking agen-
9 cies consider appropriate to ensure that the routine
10 acceptance of deposits is kept, to the extent prac-
11 ticable, physically segregated from insurance product
12 activity.

13 “(2) REQUIREMENTS.—Regulations prescribed
14 pursuant to paragraph (1) shall include the fol-
15 lowing:

16 “(A) SEPARATE SETTING.—A clear delin-
17 eation of the setting in which, and the cir-
18 cumstances under which, transactions involving
19 insurance products should be conducted in a lo-
20 cation physically segregated from an area where
21 retail deposits are routinely accepted.

22 “(B) REFERRALS.—Standards which per-
23 mit any person accepting deposits from the
24 public in an area where such transactions are
25 routinely conducted in an insured depository in-

stitution to refer a customer who seeks to purchase any insurance product to a qualified person who sells such product, only if the person making the referral receives no more than a one-time nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

“(C) QUALIFICATION AND LICENSING REQUIREMENTS.—Standards prohibiting any insured depository institution from permitting any person to sell or offer for sale any insurance product in any part of any office of the institution, or on behalf of the institution, unless such person is appropriately qualified and licensed.

“(e) DOMESTIC VIOLENCE DISCRIMINATION PROHIBITION.—

“(1) IN GENERAL.—In the case of an applicant for, or an insured under, any insurance product described in paragraph (2), the status of the applicant or insured as a victim of domestic violence, or as a provider of services to victims of domestic violence, shall not be considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of insurance policies, or

1 payment of insurance claims, except as required or
2 expressly permitted under State law.

3 “(2) SCOPE OF APPLICATION.—The prohibition
4 contained in paragraph (1) shall apply to any insur-
5 ance product which is sold or offered for sale, as
6 principal, agent, or broker, by any insured deposi-
7 tory institution or wholesale financial institution or
8 any person who is engaged in such activities at an
9 office of the institution or on behalf of the institu-
10 tion.

11 “(3) SENSE OF THE CONGRESS.—It is the sense
12 of the Congress that, by the end of the 30-month pe-
13 riod beginning on the date of the enactment of this
14 Act, the States should enact prohibitions against dis-
15 crimination with respect to insurance products that
16 are at least as strict as the prohibitions contained in
17 paragraph (1).

18 “(4) DOMESTIC VIOLENCE DEFINED.—For pur-
19 poses of this subsection, the term ‘domestic violence’
20 means the occurrence of one or more of the following
21 acts by a current or former family member, house-
22 hold member, intimate partner, or caretaker:

23 “(A) Attempting to cause or causing or
24 threatening another person physical harm, se-

1 vere emotional distress, psychological trauma,
2 rape, or sexual assault.

3 “(B) Engaging in a course of conduct or
4 repeatedly committing acts toward another per-
5 son, including following the person without
6 proper authority, under circumstances that
7 place the person in reasonable fear of bodily in-
8 jury or physical harm.

9 “(C) Subjecting another person to false
10 imprisonment.

11 “(D) Attempting to cause or cause damage
12 to property so as to intimidate or attempt to
13 control the behavior of another person.

14 “(f) CONSUMER GRIEVANCE PROCESS.—The Federal
15 banking agencies shall jointly establish a consumer com-
16 plaint mechanism, for receiving and expeditiously address-
17 ing consumer complaints alleging a violation of regulations
18 issued under the section, which shall—

19 “(1) establish a group within each regulatory
20 agency to receive such complaints;

21 “(2) develop procedures for investigating such
22 complaints;

23 “(3) develop procedures for informing con-
24 sumers of rights they may have in connection with
25 such complaints; and

1 “(4) develop procedures for addressing concerns
2 raised by such complaints, as appropriate, including
3 procedures for the recovery of losses to the extent
4 appropriate.

5 “(g) EFFECT ON OTHER AUTHORITY.—

6 “(1) IN GENERAL.—No provision of this section
7 shall be construed as granting, limiting, or otherwise
8 affecting—

9 “(A) any authority of the Securities and
10 Exchange Commission, any self-regulatory or-
11 ganization, the Municipal Securities Rule-
12 making Board, or the Secretary of the Treasury
13 under any Federal securities law; or

14 “(B) except as provided in paragraph (2),
15 any authority of any State insurance commis-
16 sioner or other State authority under any State
17 law.

18 “(2) COORDINATION WITH STATE LAW.—

19 “(A) IN GENERAL.—Except as provided in
20 subparagraph (B), regulations prescribed by a
21 Federal banking agency under this section shall
22 not apply to retail sales, solicitations, adver-
23 tising, or offers of any insurance product by
24 any insured depository institution or wholesale
25 financial institution or to any person who is en-

1 gaged in such activities at an office of such in-
2 stitution or on behalf of the institution, in a
3 State where the State has in effect statutes,
4 regulations, orders, or interpretations, that are
5 inconsistent with or contrary to the regulations
6 prescribed by the Federal banking agencies.

7 “(B) PREEMPTION.—If, with respect to
8 any provision of the regulations prescribed
9 under this section, the Board of Governors of
10 the Federal Reserve System, the Comptroller of
11 the Currency, and the Board of Directors of the
12 Federal Deposit Insurance Corporation deter-
13 mine jointly that the protection afforded by
14 such provision for consumers is greater than
15 the protection provided by a comparable provi-
16 sion of the statutes, regulations, orders, or in-
17 terpretations referred to in subparagraph (A) of
18 any State, such provision of the regulations pre-
19 scribed under this section shall supersede the
20 comparable provision of such State statute, reg-
21 ulation, order, or interpretation.

22 “(h) INSURANCE PRODUCT DEFINED.—For purposes
23 of this section, the term ‘insurance product’ includes an
24 annuity contract the income of which is subject to tax

1 treatment under section 72 of the Internal Revenue Code
2 of 1986.”.

3 **SEC. 308. CERTAIN STATE AFFILIATION LAWS PREEMPTED**
4 **FOR INSURANCE COMPANIES AND AFFILI-**
5 **ATES.**

6 Except as provided in section 104(a)(2), no State
7 may, by law, regulation, order, interpretation, or
8 otherwise—

9 (1) prevent or significantly interfere with the
10 ability of any insurer, or any affiliate of an insurer
11 (whether such affiliate is organized as a stock com-
12 pany, mutual holding company, or otherwise), to be-
13 come a financial holding company or to acquire con-
14 trol of an insured depository institution;

15 (2) limit the amount of an insurer’s assets that
16 may be invested in the voting securities of an in-
17 sured depository institution (or any company which
18 controls such institution), except that the laws of an
19 insurer’s State of domicile may limit the amount of
20 such investment to an amount that is not less than
21 5 percent of the insurer’s admitted assets; or

22 (3) prevent, significantly interfere with, or have
23 the authority to review, approve, or disapprove a
24 plan of reorganization by which an insurer proposes
25 to reorganize from mutual form to become a stock

1 insurer (whether as a direct or indirect subsidiary of
2 a mutual holding company or otherwise) unless such
3 State is the State of domicile of the insurer.

4 **SEC. 309. INTERAGENCY CONSULTATION.**

5 (a) PURPOSE.—It is the intention of the Congress
6 that the Board of Governors of the Federal Reserve Sys-
7 tem, as the umbrella supervisor for financial holding com-
8 panies, and the State insurance regulators, as the func-
9 tional regulators of companies engaged in insurance activi-
10 ties, coordinate efforts to supervise companies that control
11 both a depository institution and a company engaged in
12 insurance activities regulated under State law. In par-
13 ticular, Congress believes that the Board and the State
14 insurance regulators should share, on a confidential basis,
15 information relevant to the supervision of companies that
16 control both a depository institution and a company en-
17 gaged in insurance activities, including information re-
18 garding the financial health of the consolidated organiza-
19 tion and information regarding transactions and relation-
20 ships between insurance companies and affiliated deposi-
21 tory institutions. The appropriate Federal banking agen-
22 cies for depository institutions should also share, on a con-
23 fidential basis, information with the relevant State insur-
24 ance regulators regarding transactions and relationships
25 between depository institutions and affiliated companies

1 engaged in insurance activities. The purpose of this sec-
2 tion is to encourage this coordination and confidential
3 sharing of information, and to thereby improve both the
4 efficiency and the quality of the supervision of financial
5 holding companies and their affiliated depository institu-
6 tions and companies engaged in insurance activities.

7 (b) EXAMINATION RESULTS AND OTHER INFORMA-
8 TION.—

9 (1) INFORMATION OF THE BOARD.—Upon the
10 request of the appropriate insurance regulator of
11 any State, the Board may provide any information
12 of the Board regarding the financial condition, risk
13 management policies, and operations of any financial
14 holding company that controls a company that is en-
15 gaged in insurance activities and is regulated by
16 such State insurance regulator, and regarding any
17 transaction or relationship between such an insur-
18 ance company and any affiliated depository institu-
19 tion. The Board may provide any other information
20 to the appropriate State insurance regulator that the
21 Board believes is necessary or appropriate to permit
22 the State insurance regulator to administer and en-
23 force applicable State insurance laws.

24 (2) BANKING AGENCY INFORMATION.—Upon
25 the request of the appropriate insurance regulator of

1 any State, the appropriate Federal banking agency
2 may provide any information of the agency regard-
3 ing any transaction or relationship between a deposi-
4 tory institution supervised by such Federal banking
5 agency and any affiliated company that is engaged
6 in insurance activities regulated by such State insur-
7 ance regulator. The appropriate Federal banking
8 agency may provide any other information to the ap-
9 propriate State insurance regulator that the agency
10 believes is necessary or appropriate to permit the
11 State insurance regulator to administer and enforce
12 applicable State insurance laws.

13 (3) STATE INSURANCE REGULATOR INFORMA-
14 TION.—Upon the request of the Board or the appro-
15 priate Federal banking agency, a State insurance
16 regulator may provide any examination or other re-
17 ports, records, or other information to which such
18 insurance regulator may have access with respect to
19 a company which—

20 (A) is engaged in insurance activities and
21 regulated by such insurance regulator; and

22 (B) is an affiliate of an insured depository
23 institution, wholesale financial institution, or fi-
24 nancial holding company.

1 (c) CONSULTATION.—Before making any determina-
2 tion relating to the initial affiliation of, or the continuing
3 affiliation of, an insured depository institution, wholesale
4 financial institution, or financial holding company with a
5 company engaged in insurance activities, the appropriate
6 Federal banking agency shall consult with the appropriate
7 State insurance regulator of such company and take the
8 views of such insurance regulator into account in making
9 such determination.

10 (d) EFFECT ON OTHER AUTHORITY.—Nothing in
11 this section shall limit in any respect the authority of the
12 appropriate Federal banking agency with respect to an in-
13 sured depository institution, wholesale financial institu-
14 tion, or bank holding company or any affiliate thereof
15 under any provision of law.

16 (e) CONFIDENTIALITY AND PRIVILEGE.—

17 (1) CONFIDENTIALITY.—The appropriate Fed-
18 eral banking agency shall not provide any informa-
19 tion or material that is entitled to confidential treat-
20 ment under applicable Federal banking agency regu-
21 lations, or other applicable law, to a State insurance
22 regulator unless such regulator agrees to maintain
23 the information or material in confidence and to
24 take all reasonable steps to oppose any effort to se-
25 cure disclosure of the information or material by the

1 regulator. The appropriate Federal banking agency
2 shall treat as confidential any information or mate-
3 rial obtained from a State insurance regulator that
4 is entitled to confidential treatment under applicable
5 State regulations, or other applicable law, and take
6 all reasonable steps to oppose any effort to secure
7 disclosure of the information or material by the Fed-
8 eral banking agency.

9 (2) PRIVILEGE.—The provision pursuant to this
10 section of information or material by a Federal
11 banking agency or State insurance regulator shall
12 not constitute a waiver of, or otherwise affect, any
13 privilege to which the information or material is oth-
14 erwise subject.

15 (f) DEFINITIONS.—For purposes of this section, the
16 following definitions shall apply:

17 (1) APPROPRIATE FEDERAL BANKING AGENCY;
18 INSURED DEPOSITORY INSTITUTION.—The terms
19 “appropriate Federal banking agency” and “insured
20 depository institution” have the same meanings as
21 in section 3 of the Federal Deposit Insurance Act.

22 (2) BOARD; FINANCIAL HOLDING COMPANY;
23 AND WHOLESALE FINANCIAL INSTITUTION.—The
24 terms “Board”, “financial holding company”, and
25 “wholesale financial institution” have the same

1 meanings as in section 2 of the Bank Holding Com-
2 pany Act of 1956.

3 **SEC. 310. DEFINITION OF STATE.**

4 For purposes of this subtitle, the term “State” means
5 any State of the United States, the District of Columbia,
6 any territory of the United States, Puerto Rico, Guam,
7 American Samoa, the Trust Territory of the Pacific Is-
8 lands, the Virgin Islands, and the Northern Mariana Is-
9 lands.

10 **Subtitle B—Redomestication of**
11 **Mutual Insurers**

12 **SEC. 311. GENERAL APPLICATION.**

13 This subtitle shall only apply to a mutual insurance
14 company in a State which has not enacted a law which
15 expressly establishes reasonable terms and conditions for
16 a mutual insurance company domiciled in such State to
17 reorganize into a mutual holding company.

18 **SEC. 312. REDOMESTICATION OF MUTUAL INSURERS.**

19 (a) REDOMESTICATION.—A mutual insurer organized
20 under the laws of any State may transfer its domicile to
21 a transferee domicile as a step in a reorganization in
22 which, pursuant to the laws of the transferee domicile and
23 consistent with the standards in subsection (f), the mutual
24 insurer becomes a stock insurer that is a direct or indirect
25 subsidiary of a mutual holding company.

1 (b) RESULTING DOMICILE.—Upon complying with
2 the applicable law of the transferee domicile governing
3 transfers of domicile and completion of a transfer pursu-
4 ant to this section, the mutual insurer shall cease to be
5 a domestic insurer in the transferor domicile and, as a
6 continuation of its corporate existence, shall be a domestic
7 insurer of the transferee domicile.

8 (c) LICENSES PRESERVED.—The certificate of au-
9 thority, agents' appointments and licenses, rates, approv-
10 als and other items that a licensed State allows and that
11 are in existence immediately prior to the date that a re-
12 domesticating insurer transfers its domicile pursuant to
13 this subtitle shall continue in full force and effect upon
14 transfer, if the insurer remains duly qualified to transact
15 the business of insurance in such licensed State.

16 (d) EFFECTIVENESS OF OUTSTANDING POLICIES
17 AND CONTRACTS.—

18 (1) IN GENERAL.—All outstanding insurance
19 policies and annuities contracts of a redomesticating
20 insurer shall remain in full force and effect and need
21 not be endorsed as to the new domicile of the in-
22 surer, unless so ordered by the State insurance regu-
23 lator of a licensed State, and then only in the case
24 of outstanding policies and contracts whose owners
25 reside in such licensed State.

1 (2) FORMS.—

2 (A) Applicable State law may require a re-
3 domesticating insurer to file new policy forms
4 with the State insurance regulator of a licensed
5 State on or before the effective date of the
6 transfer.

7 (B) Notwithstanding subparagraph (A), a
8 redomesticating insurer may use existing policy
9 forms with appropriate endorsements to reflect
10 the new domicile of the redomesticating insurer
11 until the new policy forms are approved for use
12 by the State insurance regulator of such li-
13 censed State.

14 (e) NOTICE.—A redomesticating insurer shall give
15 notice of the proposed transfer to the State insurance reg-
16 ulator of each licensed State and shall file promptly any
17 resulting amendments to corporate documents required to
18 be filed by a foreign licensed mutual insurer with the in-
19 surance regulator of each such licensed State.

20 (f) PROCEDURAL REQUIREMENTS.—No mutual in-
21 surer may redomesticate to another State and reorganize
22 into a mutual holding company pursuant to this section
23 unless the State insurance regulator of the transferee
24 domicile determines that the plan of reorganization of the
25 insurer includes the following requirements:

1 (1) APPROVAL BY BOARD OF DIRECTORS AND
2 POLICYHOLDERS.—The reorganization is approved
3 by at least a majority of the board of directors of
4 the mutual insurer and at least a majority of the
5 policyholders who vote after notice, disclosure of the
6 reorganization and the effects of the transaction on
7 policyholder contractual rights, and reasonable op-
8 portunity to vote, in accordance with such notice,
9 disclosure, and voting procedures as are approved by
10 the State insurance regulator of the transferee domi-
11 cile.

12 (2) CONTINUED VOTING CONTROL BY POLICY-
13 HOLDERS; REVIEW OF PUBLIC STOCK OFFERING.—
14 After the consummation of a reorganization, the pol-
15 icyholders of the reorganized insurer shall have the
16 same voting rights with respect to the mutual hold-
17 ing company as they had before the reorganization
18 with respect to the mutual insurer. With respect to
19 an initial public offering of stock, the offering shall
20 be conducted in compliance with applicable securities
21 laws and in a manner approved by the State insur-
22 ance regulator of the transferee domicile.

23 (3) AWARD OF STOCK OR GRANT OF OPTIONS
24 TO OFFICERS AND DIRECTORS.—For a period of 6
25 months after completion of an initial public offering,

1 neither a stock holding company nor the converted
2 insurer shall award any stock options or stock
3 grants to persons who are elected officers or direc-
4 tors of the mutual holding company, the stock hold-
5 ing company, or the converted insurer, except with
6 respect to any such awards or options to which a
7 person is entitled as a policyholder and as approved
8 by the State insurance regulator of the transferee
9 domicile.

10 (4) CONTRACTUAL RIGHTS.—Upon reorganiza-
11 tion into a mutual holding company, the contractual
12 rights of the policyholders are preserved.

13 (5) FAIR AND EQUITABLE TREATMENT OF POL-
14 ICYHOLDERS.—The reorganization is approved as
15 fair and equitable to the policyholders by the insur-
16 ance regulator of the transferee domicile.

17 **SEC. 313. EFFECT ON STATE LAWS RESTRICTING REDOMES-**
18 **TICATION.**

19 (a) IN GENERAL.—Unless otherwise permitted by
20 this subtitle, State laws of any transferor domicile that
21 conflict with the purposes and intent of this subtitle are
22 preempted, including but not limited to—

23 (1) any law that has the purpose or effect of
24 impeding the activities of, taking any action against,
25 or applying any provision of law or regulation to,

1 any insurer or an affiliate of such insurer because
2 that insurer or any affiliate plans to redomesticate,
3 or has redomesticated, pursuant to this subtitle;

4 (2) any law that has the purpose or effect of
5 impeding the activities of, taking action against, or
6 applying any provision of law or regulation to, any
7 insured or any insurance licensee or other inter-
8 mediary because such person has procured insurance
9 from or placed insurance with any insurer or affil-
10 iate of such insurer that plans to redomesticate, or
11 has redomesticated, pursuant to this subtitle, but
12 only to the extent that such law would treat such in-
13 sured licensee or other intermediary differently than
14 if the person procured insurance from, or placed in-
15 surance with, an insured licensee or other inter-
16 mediary which had not redomesticated;

17 (3) any law that has the purpose or effect of
18 terminating, because of the redomestication of a mu-
19 tual insurer pursuant to this subtitle, any certificate
20 of authority, agent appointment or license, rate ap-
21 proval, or other approval, of any State insurance
22 regulator or other State authority in existence imme-
23 diately prior to the redomestication in any State
24 other than the transferee domicile.

1 (b) DIFFERENTIAL TREATMENT PROHIBITED.—No
2 State law, regulation, interpretation, or functional equiva-
3 lent thereof, of a State other than a transferee domicile
4 may treat a redomesticating or redomesticated insurer or
5 any affiliate thereof any differently than an insurer oper-
6 ating in that State that is not a redomesticating or re-
7 domesticated insurer.

8 (c) LAWS PROHIBITING OPERATIONS.—If any li-
9 censed State fails to issue, delays the issuance of, or seeks
10 to revoke an original or renewal certificate of authority
11 of a redomesticated insurer immediately following re-
12 domestication, except on grounds and in a manner con-
13 sistent with its past practices regarding the issuance of
14 certificates of authority to foreign insurers that are not
15 redomesticating, then the redomesticating insurer shall be
16 exempt from any State law of the licensed State to the
17 extent that such State law or the operation of such State
18 law would make unlawful, or regulate, directly or indi-
19 rectly, the operation of the redomesticated insurer, except
20 that such licensed State may require the redomesticated
21 insurer to—

22 (1) comply with the unfair claim settlement
23 practices law of the licensed State;

24 (2) pay, on a nondiscriminatory basis, applica-
25 ble premium and other taxes which are levied on li-

1 censed insurers or policyholders under the laws of
2 the licensed State;

3 (3) register with and designate the State insur-
4 ance regulator as its agent solely for the purpose of
5 receiving service of legal documents or process;

6 (4) submit to an examination by the State in-
7 surance regulator in any licensed state in which the
8 redomesticated insurer is doing business to deter-
9 mine the insurer's financial condition, if—

10 (A) the State insurance regulator of the
11 transferee domicile has not begun an examina-
12 tion of the redomesticated insurer and has not
13 scheduled such an examination to begin before
14 the end of the 1-year period beginning on the
15 date of the redomestication; and

16 (B) any such examination is coordinated to
17 avoid unjustified duplication and repetition;

18 (5) comply with a lawful order issued in—

19 (A) a delinquency proceeding commenced
20 by the State insurance regulator of any licensed
21 State if there has been a judicial finding of fi-
22 nancial impairment under paragraph (7); or

23 (B) a voluntary dissolution proceeding;

24 (6) comply with any State law regarding decep-
25 tive, false, or fraudulent acts or practices, except

1 that if the licensed State seeks an injunction regard-
2 ing the conduct described in this paragraph, such in-
3 junction must be obtained from a court of competent
4 jurisdiction as provided in section 314(a);

5 (7) comply with an injunction issued by a court
6 of competent jurisdiction, upon a petition by the
7 State insurance regulator alleging that the redomes-
8 ticating insurer is in hazardous financial condition
9 or is financially impaired;

10 (8) participate in any insurance insolvency
11 guaranty association on the same basis as any other
12 insurer licensed in the licensed State; and

13 (9) require a person acting, or offering to act,
14 as an insurance licensee for a redomesticated insurer
15 in the licensed State to obtain a license from that
16 State, except that such State may not impose any
17 qualification or requirement that discriminates
18 against a nonresident insurance licensee.

19 **SEC. 314. OTHER PROVISIONS.**

20 (a) JUDICIAL REVIEW.—The appropriate United
21 States district court shall have exclusive jurisdiction over
22 litigation arising under this section involving any redomes-
23 ticating or redomesticated insurer.

24 (b) SEVERABILITY.—If any provision of this section,
25 or the application thereof to any person or circumstances,

1 is held invalid, the remainder of the section, and the appli-
2 cation of such provision to other persons or circumstances,
3 shall not be affected thereby.

4 **SEC. 315. DEFINITIONS.**

5 For purposes of this subtitle, the following definitions
6 shall apply:

7 (1) COURT OF COMPETENT JURISDICTION.—

8 The term “court of competent jurisdiction” means a
9 court authorized pursuant to section 314(a) to adju-
10 dicate litigation arising under this subtitle.

11 (2) DOMICILE.—The term “domicile” means
12 the State in which an insurer is incorporated, char-
13 tered, or organized.

14 (3) INSURANCE LICENSEE.—The term “insur-
15 ance licensee” means any person holding a license
16 under State law to act as insurance agent, subagent,
17 broker, or consultant.

18 (4) INSTITUTION.—The term “institution”
19 means a corporation, joint stock company, limited li-
20 ability company, limited liability partnership, asso-
21 ciation, trust, partnership, or any similar entity.

22 (5) LICENSED STATE.—The term “licensed
23 State” means any State, the District of Columbia,
24 American Samoa, Guam, Puerto Rico, or the United
25 States Virgin Islands in which the redomesticating

1 insurer has a certificate of authority in effect imme-
2 diately prior to the redomestication.

3 (6) MUTUAL INSURER.—The term “mutual in-
4 surer” means a mutual insurer organized under the
5 laws of any State.

6 (7) PERSON.—The term “person” means an in-
7 dividual, institution, government or governmental
8 agency, State or political subdivision of a State, pub-
9 lic corporation, board, association, estate, trustee, or
10 fiduciary, or other similar entity.

11 (8) POLICYHOLDER.—The term “policyholder”
12 means the owner of a policy issued by a mutual in-
13 surer, except that, with respect to voting rights, the
14 term means a member of a mutual insurer or mu-
15 tual holding company granted the right to vote, as
16 determined under applicable State law.

17 (9) REDOMESTICATED INSURER.—The term
18 “redomesticated insurer” means a mutual insurer
19 that has redomesticated pursuant to this subtitle.

20 (10) REDOMESTICATING INSURER.—The term
21 “redomesticating insurer” means a mutual insurer
22 that is redomesticating pursuant to this subtitle.

23 (11) REDOMESTICATION OR TRANSFER.—The
24 terms “redomestication” and “transfer” mean the

1 transfer of the domicile of a mutual insurer from
2 one State to another State pursuant to this subtitle.

3 (12) STATE INSURANCE REGULATOR.—The
4 term “State insurance regulator” means the prin-
5 cipal insurance regulatory authority of a State, the
6 District of Columbia, American Samoa, Guam,
7 Puerto Rico, or the United States Virgin Islands.

8 (13) STATE LAW.—The term “State law”
9 means the statutes of any State, the District of Co-
10 lumbia, American Samoa, Guam, Puerto Rico, or the
11 United States Virgin Islands and any regulation,
12 order, or requirement prescribed pursuant to any
13 such statute.

14 (14) TRANSFEREE DOMICILE.—The term
15 “transferee domicile” means the State to which a
16 mutual insurer is redomesticating pursuant to this
17 subtitle.

18 (15) TRANSFEROR DOMICILE.—The term
19 “transferor domicile” means the State from which a
20 mutual insurer is redomesticating pursuant to this
21 subtitle.

22 **SEC. 316. EFFECTIVE DATE.**

23 This subtitle shall take effect on the date of the en-
24 actment of this Act.

1 **Subtitle C—National Association of**
2 **Registered Agents and Brokers**

3 **SEC. 321. STATE FLEXIBILITY IN MULTISTATE LICENSING**
4 **REFORMS.**

5 (a) IN GENERAL.—The provisions of this subtitle
6 shall take effect unless, not later than 3 years after the
7 date of the enactment of this Act, at least a majority of
8 the States—

9 (1) have enacted uniform laws and regulations
10 governing the licensure of individuals and entities
11 authorized to sell and solicit the purchase of insur-
12 ance within the State; or

13 (2) have enacted reciprocity laws and regula-
14 tions governing the licensure of nonresident individ-
15 uals and entities authorized to sell and solicit insur-
16 ance within those States.

17 (b) UNIFORMITY REQUIRED.—States shall be deemed
18 to have established the uniformity necessary to satisfy
19 subsection (a)(1) if the States—

20 (1) establish uniform criteria regarding the in-
21 tegrity, personal qualifications, education, training,
22 and experience of licensed insurance producers, in-
23 cluding the qualification and training of sales per-
24 sonnel in ascertaining the appropriateness of a par-
25 ticular insurance product for a prospective customer;

1 (2) establish uniform continuing education re-
2 quirements for licensed insurance producers;

3 (3) establish uniform ethics course require-
4 ments for licensed insurance producers in conjunc-
5 tion with the continuing education requirements
6 under paragraph (2);

7 (4) establish uniform criteria to ensure that an
8 insurance product, including any annuity contract,
9 sold to a consumer is suitable and appropriate for
10 the consumer based on financial information dis-
11 closed by the consumer; and

12 (5) do not impose any requirement upon any in-
13 surance producer to be licensed or otherwise quali-
14 fied to do business as a nonresident that has the ef-
15 fect of limiting or conditioning that producer's ac-
16 tivities because of its residence or place of oper-
17 ations, except that counter-signature requirements
18 imposed on nonresident producers shall not be
19 deemed to have the effect of limiting or conditioning
20 a producer's activities because of its residence or
21 place of operations under this section.

22 (c) RECIPROCITY REQUIRED.—States shall be
23 deemed to have established the reciprocity required to sat-
24 isfy subsection (a)(2) if the following conditions are met:

1 (1) ADMINISTRATIVE LICENSING PROCE-
2 DURES.—At least a majority of the States permit a
3 producer that has a resident license for selling or so-
4 liciting the purchase of insurance in its home State
5 to receive a license to sell or solicit the purchase of
6 insurance in such majority of States as a non-
7 resident to the same extent that such producer is
8 permitted to sell or solicit the purchase of insurance
9 in its State, if the producer's home State also
10 awards such licenses on such a reciprocal basis,
11 without satisfying any additional requirements other
12 than submitting—

13 (A) a request for licensure;

14 (B) the application for licensure that the
15 producer submitted to its home State;

16 (C) proof that the producer is licensed and
17 in good standing in its home State; and

18 (D) the payment of any requisite fee to the
19 appropriate authority.

20 (2) CONTINUING EDUCATION REQUIRE-
21 MENTS.—A majority of the States accept an insur-
22 ance producer's satisfaction of its home State's con-
23 tinuing education requirements for licensed insur-
24 ance producers to satisfy the States' own continuing
25 education requirements if the producer's home State

1 also recognizes the satisfaction of continuing edu-
2 cation requirements on such a reciprocal basis.

3 (3) NO LIMITING NONRESIDENT REQUIRE-
4 MENTS.—A majority of the States do not impose
5 any requirement upon any insurance producer to be
6 licensed or otherwise qualified to do business as a
7 nonresident that has the effect of limiting or condi-
8 tioning that producer's activities because of its resi-
9 dence or place of operations, except that
10 countersignature requirements imposed on non-
11 resident producers shall not be deemed to have the
12 effect of limiting or conditioning a producer's activi-
13 ties because of its residence or place of operations
14 under this section.

15 (4) RECIPROCAL RECIPROCITY.—Each of the
16 States that satisfies paragraphs (1), (2), and (3)
17 grants reciprocity to residents of all of the other
18 States that satisfy such paragraphs.

19 (d) DETERMINATION.—

20 (1) NAIC DETERMINATION.—At the end of the
21 3-year period beginning on the date of the enact-
22 ment of this Act, the National Association of Insur-
23 ance Commissioners shall determine, in consultation
24 with the insurance commissioners or chief insurance
25 regulatory officials of the States, whether the uni-

1 formity or reciprocity required by subsections (b)
2 and (c) has been achieved.

3 (2) JUDICIAL REVIEW.—The appropriate
4 United States district court shall have exclusive ju-
5 risdiction over any challenge to the National Asso-
6 ciation of Insurance Commissioners' determination
7 under this section and such court shall apply the
8 standards set forth in section 706 of title 5, United
9 States Code, when reviewing any such challenge.

10 (e) CONTINUED APPLICATION.—If, at any time, the
11 uniformity or reciprocity required by subsections (b) and
12 (c) no longer exists, the provisions of this subtitle shall
13 take effect 2 years after the date on which such uniformity
14 or reciprocity ceases to exist, unless the uniformity or reci-
15 procity required by those provisions is satisfied before the
16 expiration of that 2-year period.

17 (f) SAVINGS PROVISION.—No provision of this sec-
18 tion shall be construed as requiring that any law, regula-
19 tion, provision, or action of any State which purports to
20 regulate insurance producers, including any such law, reg-
21 ulation, provision, or action which purports to regulate un-
22 fair trade practices or establish consumer protections, in-
23 cluding countersignature laws, be altered or amended in
24 order to satisfy the uniformity or reciprocity required by
25 subsections (b) and (c), unless any such law, regulation,

1 provision, or action is inconsistent with a specific require-
2 ment of any such subsection and then only to the extent
3 of such inconsistency.

4 (g) UNIFORM LICENSING.—Nothing in this section
5 shall be construed to require any State to adopt new or
6 additional licensing requirements to achieve the uniformity
7 necessary to satisfy subsection (a)(1).

8 **SEC. 322. NATIONAL ASSOCIATION OF REGISTERED**
9 **AGENTS AND BROKERS.**

10 (a) ESTABLISHMENT.—There is established the Na-
11 tional Association of Registered Agents and Brokers
12 (hereafter in this subtitle referred to as the “Associa-
13 tion”).

14 (b) STATUS.—The Association shall—

15 (1) be a nonprofit corporation;

16 (2) have succession until dissolved by an Act of
17 Congress;

18 (3) not be an agent or instrumentality of the
19 United States Government; and

20 (4) except as otherwise provided in this Act, be
21 subject to, and have all the powers conferred upon
22 a nonprofit corporation by the District of Columbia
23 Nonprofit Corporation Act (D.C. Code, sec. 29y-
24 1001 et seq.).

1 **SEC. 323. PURPOSE.**

2 The purpose of the Association shall be to provide
3 a mechanism through which uniform licensing, appoint-
4 ment, continuing education, and other insurance producer
5 sales qualification requirements and conditions can be
6 adopted and applied on a multistate basis, while pre-
7 serving the right of States to license, supervise, and dis-
8 cipline insurance producers and to prescribe and enforce
9 laws and regulations with regard to insurance-related con-
10 sumer protection and unfair trade practices.

11 **SEC. 324. RELATIONSHIP TO THE FEDERAL GOVERNMENT.**

12 The Association shall be subject to the supervision
13 and oversight of the National Association of Insurance
14 Commissioners (hereafter in this subtitle referred to as the
15 “NAIC”).

16 **SEC. 325. MEMBERSHIP.**

17 (a) ELIGIBILITY.—

18 (1) IN GENERAL.—Any State-licensed insurance
19 producer shall be eligible to become a member in the
20 Association.

21 (2) INELIGIBILITY FOR SUSPENSION OR REV-
22 OCATION OF LICENSE.—Notwithstanding paragraph
23 (1), a State-licensed insurance producer shall not be
24 eligible to become a member if a State insurance
25 regulator has suspended or revoked such producer’s
26 license in that State during the 3-year period pre-

1 ceding the date on which such producer applies for
2 membership.

3 (3) RESUMPTION OF ELIGIBILITY.—Paragraph
4 (2) shall cease to apply to any insurance producer
5 if—

6 (A) the State insurance regulator renews
7 the license of such producer in the State in
8 which the license was suspended or revoked; or

9 (B) the suspension or revocation is subse-
10 quently overturned.

11 (b) AUTHORITY TO ESTABLISH MEMBERSHIP CRI-
12 TERIA.—The Association shall have the authority to estab-
13 lish membership criteria that—

14 (1) bear a reasonable relationship to the pur-
15 poses for which the Association was established; and

16 (2) do not unfairly limit the access of smaller
17 agencies to the Association membership.

18 (c) ESTABLISHMENT OF CLASSES AND CAT-
19 EGORIES.—

20 (1) CLASSES OF MEMBERSHIP.—The Associa-
21 tion may establish separate classes of membership,
22 with separate criteria, if the Association reasonably
23 determines that performance of different duties re-
24 quires different levels of education, training, or expe-
25 rience.

1 (2) CATEGORIES.—The Association may estab-
2 lish separate categories of membership for individ-
3 uals and for other persons. The establishment of any
4 such categories of membership shall be based either
5 on the types of licensing categories that exist under
6 State laws or on the aggregate amount of business
7 handled by an insurance producer. No special cat-
8 egories of membership, and no distinct membership
9 criteria, shall be established for members which are
10 insured depository institutions or wholesale financial
11 institutions or for their employees, agents, or affili-
12 ates.

13 (d) MEMBERSHIP CRITERIA.—

14 (1) IN GENERAL.—The Association may estab-
15 lish criteria for membership which shall include
16 standards for integrity, personal qualifications, edu-
17 cation, training, and experience.

18 (2) MINIMUM STANDARD.—In establishing cri-
19 teria under paragraph (1), the Association shall con-
20 sider the highest levels of insurance producer quali-
21 fications established under the licensing laws of the
22 States.

23 (e) EFFECT OF MEMBERSHIP.—Membership in the
24 Association shall entitle the member to licensure in each
25 State for which the member pays the requisite fees, includ-

1 ing licensing fees and, where applicable, bonding require-
2 ments, set by such State.

3 (f) ANNUAL RENEWAL.—Membership in the Associa-
4 tion shall be renewed on an annual basis.

5 (g) CONTINUING EDUCATION.—The Association shall
6 establish, as a condition of membership, continuing edu-
7 cation requirements which shall be comparable to or great-
8 er than the continuing education requirements under the
9 licensing laws of a majority of the States.

10 (h) SUSPENSION AND REVOCATION.—The Associa-
11 tion may—

12 (1) inspect and examine the records and offices
13 of the members of the Association to determine com-
14 pliance with the criteria for membership established
15 by the Association; and

16 (2) suspend or revoke the membership of an in-
17 surance producer if—

18 (A) the producer fails to meet the applica-
19 ble membership criteria of the Association; or

20 (B) the producer has been subject to dis-
21 ciplinary action pursuant to a final adjudicatory
22 proceeding under the jurisdiction of a State in-
23 surance regulator, and the Association con-
24 cludes that retention of membership in the As-
25 sociation would not be in the public interest.

1 (i) OFFICE OF CONSUMER COMPLAINTS.—

2 (1) IN GENERAL.—The Association shall estab-
3 lish an office of consumer complaints that shall—

4 (A) receive and investigate complaints
5 from both consumers and State insurance regu-
6 lators related to members of the Association;
7 and

8 (B) recommend to the Association any dis-
9 ciplinary actions that the office considers appro-
10 priate, to the extent that any such rec-
11 ommendation is not inconsistent with State law.

12 (2) RECORDS AND REFERRALS.—The office of
13 consumer complaints of the Association shall—

14 (A) maintain records of all complaints re-
15 ceived in accordance with paragraph (1) and
16 make such records available to the NAIC and
17 to each State insurance regulator for the State
18 of residence of the consumer who filed the com-
19 plaint; and

20 (B) refer, when appropriate, any such com-
21 plaint to any appropriate State insurance regu-
22 lator.

23 (3) TELEPHONE AND OTHER ACCESS.—The of-
24 fice of consumer complaints shall maintain a toll-free
25 telephone number for the purpose of this subsection

1 and, as practicable, other alternative means of com-
2 munication with consumers, such as an Internet
3 home page.

4 **SEC. 326. BOARD OF DIRECTORS.**

5 (a) ESTABLISHMENT.—There is established the
6 board of directors of the Association (hereafter in this sub-
7 title referred to as the “Board”) for the purpose of gov-
8 erning and supervising the activities of the Association
9 and the members of the Association.

10 (b) POWERS.—The Board shall have such powers and
11 authority as may be specified in the bylaws of the Associa-
12 tion.

13 (c) COMPOSITION.—

14 (1) MEMBERS.—The Board shall be composed
15 of seven members appointed by the NAIC.

16 (2) REQUIREMENT.—At least four of the mem-
17 bers of the Board shall have significant experience
18 with the regulation of commercial lines of insurance
19 in at least 1 of the 20 States in which the greatest
20 total dollar amount of commercial-lines insurance is
21 placed in the United States.

22 (3) INITIAL BOARD MEMBERSHIP.—

23 (A) IN GENERAL.—If, by the end of the 2-
24 year period beginning on the date of the enact-
25 ment of this Act, the NAIC has not appointed

1 the initial seven members of the Board of the
2 Association, the initial Board shall consist of
3 the seven State insurance regulators of the
4 seven States with the greatest total dollar
5 amount of commercial-lines insurance in place
6 as of the end of such period.

7 (B) ALTERNATE COMPOSITION.—If any of
8 the State insurance regulators described in sub-
9 paragraph (A) declines to serve on the Board,
10 the State insurance regulator with the next
11 greatest total dollar amount of commercial-lines
12 insurance in place, as determined by the NAIC
13 as of the end of such period, shall serve as a
14 member of the Board.

15 (C) INOPERABILITY.—If fewer than seven
16 State insurance regulators accept appointment
17 to the Board, the Association shall be estab-
18 lished without NAIC oversight pursuant to sec-
19 tion 332.

20 (d) TERMS.—The term of each director shall, after
21 the initial appointment of the members of the Board, be
22 for 3 years, with one-third of the directors to be appointed
23 each year.

24 (e) BOARD VACANCIES.—A vacancy on the Board
25 shall be filled in the same manner as the original appoint-

1 ment of the initial Board for the remainder of the term
2 of the vacating member.

3 (f) MEETINGS.—The Board shall meet at the call of
4 the chairperson, or as otherwise provided by the bylaws
5 of the Association.

6 **SEC. 327. OFFICERS.**

7 (a) IN GENERAL.—

8 (1) POSITIONS.—The officers of the Association
9 shall consist of a chairperson and a vice chairperson
10 of the Board, a president, secretary, and treasurer
11 of the Association, and such other officers and as-
12 sistant officers as may be deemed necessary.

13 (2) MANNER OF SELECTION.—Each officer of
14 the Board and the Association shall be elected or ap-
15 pointed at such time and in such manner and for
16 such terms not exceeding 3 years as may be pre-
17 scribed in the bylaws of the Association.

18 (b) CRITERIA FOR CHAIRPERSON.—Only individuals
19 who are members of the NAIC shall be eligible to serve
20 as the chairperson of the board of directors.

21 **SEC. 328. BYLAWS, RULES, AND DISCIPLINARY ACTION.**

22 (a) ADOPTION AND AMENDMENT OF BYLAWS.—

23 (1) COPY REQUIRED TO BE FILED WITH THE
24 NAIC.—The board of directors of the Association
25 shall file with the NAIC a copy of the proposed by-

1 laws or any proposed amendment to the bylaws, ac-
2 companied by a concise general statement of the
3 basis and purpose of such proposal.

4 (2) EFFECTIVE DATE.—Except as provided in
5 paragraph (3), any proposed bylaw or proposed
6 amendment shall take effect—

7 (A) thirty days after the date of the filing
8 of a copy with the NAIC;

9 (B) upon such later date as the Associa-
10 tion may designate; or

11 (C) upon such earlier date as the NAIC
12 may determine.

13 (3) DISAPPROVAL BY THE NAIC.—Notwith-
14 standing paragraph (2), a proposed bylaw or amend-
15 ment shall not take effect if, after public notice and
16 opportunity to participate in a public hearing—

17 (A) the NAIC disapproves such proposal as
18 being contrary to the public interest or contrary
19 to the purposes of this subtitle and provides no-
20 tice to the Association setting forth the reasons
21 for such disapproval; or

22 (B) the NAIC finds that such proposal in-
23 volves a matter of such significant public inter-
24 est that public comment should be obtained, in
25 which case it may, after notifying the Associa-

tion in writing of such finding, require that the procedures set forth in subsection (b) be followed with respect to such proposal, in the same manner as if such proposed bylaw change were a proposed rule change within the meaning of such subsection.

(b) ADOPTION AND AMENDMENT OF RULES.—

(1) FILING PROPOSED REGULATIONS WITH THE NAIC.—

(A) IN GENERAL.—The board of directors of the Association shall file with the NAIC a copy of any proposed rule or any proposed amendment to a rule of the Association which shall be accompanied by a concise general statement of the basis and purpose of such proposal.

(B) OTHER RULES AND AMENDMENTS INEFFECTIVE.—No proposed rule or amendment shall take effect unless approved by the NAIC or otherwise permitted in accordance with this paragraph.

(2) INITIAL CONSIDERATION BY THE NAIC.—

Not later than 35 days after the date of publication of notice of filing of a proposal, or before the end of such longer period not to exceed 90 days as the NAIC may designate after such date, if the NAIC

1 finds such longer period to be appropriate and sets
2 forth its reasons for so finding, or as to which the
3 Association consents, the NAIC shall—

4 (A) by order approve such proposed rule or
5 amendment; or

6 (B) institute proceedings to determine
7 whether such proposed rule or amendment
8 should be modified or disapproved.

9 (3) NAIC PROCEEDINGS.—

10 (A) IN GENERAL.—Proceedings instituted
11 by the NAIC with respect to a proposed rule or
12 amendment pursuant to paragraph (2) shall—

13 (i) include notice of the grounds for
14 disapproval under consideration;

15 (ii) provide opportunity for hearing;
16 and

17 (iii) be concluded not later than 180
18 days after the date of the Association's fil-
19 ing of such proposed rule or amendment.

20 (B) DISPOSITION OF PROPOSAL.—At the
21 conclusion of any proceeding under subpara-
22 graph (A), the NAIC shall, by order, approve or
23 disapprove the proposed rule or amendment.

24 (C) EXTENSION OF TIME FOR CONSIDER-
25 ATION.—The NAIC may extend the time for

1 concluding any proceeding under subparagraph

2 (A) for—

3 (i) not more than 60 days if the
4 NAIC finds good cause for such extension
5 and sets forth its reasons for so finding; or

6 (ii) for such longer period as to which
7 the Association consents.

8 (4) STANDARDS FOR REVIEW.—

9 (A) GROUNDS FOR APPROVAL.—The NAIC
10 shall approve a proposed rule or amendment if
11 the NAIC finds that the rule or amendment is
12 in the public interest and is consistent with the
13 purposes of this Act.

14 (B) APPROVAL BEFORE END OF NOTICE
15 PERIOD.—The NAIC shall not approve any pro-
16 posed rule before the end of the 30-day period
17 beginning on the date on which the Association
18 files proposed rules or amendments in accord-
19 ance with paragraph (1), unless the NAIC finds
20 good cause for so doing and sets forth the rea-
21 sons for so finding.

22 (5) ALTERNATE PROCEDURE.—

23 (A) IN GENERAL.—Notwithstanding any
24 provision of this subsection other than subpara-
25 graph (B), a proposed rule or amendment relat-

1 ing to the administration or organization of the
2 Association shall take effect—

3 (i) upon the date of filing with the
4 NAIC, if such proposed rule or amendment
5 is designated by the Association as relating
6 solely to matters which the NAIC, con-
7 sistent with the public interest and the
8 purposes of this subsection, determines by
9 rule do not require the procedures set forth
10 in this paragraph; or

11 (ii) upon such date as the NAIC shall
12 for good cause determine.

13 (B) ABROGATION BY THE NAIC.—

14 (i) IN GENERAL.—At any time within
15 60 days after the date of filing of any pro-
16 posed rule or amendment under subpara-
17 graph (A)(i) or clause (ii) of this subpara-
18 graph, the NAIC may repeal such rule or
19 amendment and require that the rule or
20 amendment be refiled and reviewed in ac-
21 cordance with this paragraph, if the NAIC
22 finds that such action is necessary or ap-
23 propriate in the public interest, for the
24 protection of insurance producers or policy-

1 holders, or otherwise in furtherance of the
2 purposes of this subtitle.

3 (ii) EFFECT OF RECONSIDERATION BY
4 THE NAIC.—Any action of the NAIC pur-
5 suant to clause (i) shall—

6 (I) not affect the validity or force
7 of a rule change during the period
8 such rule or amendment was in effect;
9 and

10 (II) not be considered to be a
11 final action.

12 (c) ACTION REQUIRED BY THE NAIC.—The NAIC
13 may, in accordance with such rules as the NAIC deter-
14 mines to be necessary or appropriate to the public interest
15 or to carry out the purposes of this subtitle, require the
16 Association to adopt, amend, or repeal any bylaw, rule or
17 amendment of the Association, whenever adopted.

18 (d) DISCIPLINARY ACTION BY THE ASSOCIATION.—

19 (1) SPECIFICATION OF CHARGES.—In any pro-
20 ceeding to determine whether membership shall be
21 denied, suspended, revoked, or not renewed (here-
22 after in this section referred to as a “disciplinary ac-
23 tion”), the Association shall bring specific charges,
24 notify such member of such charges, give the mem-

1 ber an opportunity to defend against the charges,
2 and keep a record.

3 (2) SUPPORTING STATEMENT.—A determina-
4 tion to take disciplinary action shall be supported by
5 a statement setting forth—

6 (A) any act or practice in which such
7 member has been found to have been engaged;

8 (B) the specific provision of this subtitle,
9 the rules or regulations under this subtitle, or
10 the rules of the Association which any such act
11 or practice is deemed to violate; and

12 (C) the sanction imposed and the reason
13 for such sanction.

14 (e) NAIC REVIEW OF DISCIPLINARY ACTION.—

15 (1) NOTICE TO THE NAIC.—If the Association
16 orders any disciplinary action, the Association shall
17 promptly notify the NAIC of such action.

18 (2) REVIEW BY THE NAIC.—Any disciplinary
19 action taken by the Association shall be subject to
20 review by the NAIC—

21 (A) on the NAIC's own motion; or

22 (B) upon application by any person ag-
23 grieved by such action if such application is
24 filed with the NAIC not more than 30 days
25 after the later of—

- 1 (i) the date the notice was filed with
2 the NAIC pursuant to paragraph (1); or
3 (ii) the date the notice of the discipli-
4 nary action was received by such aggrieved
5 person.

6 (f) EFFECT OF REVIEW.—The filing of an applica-
7 tion to the NAIC for review of a disciplinary action, or
8 the institution of review by the NAIC on the NAIC's own
9 motion, shall not operate as a stay of disciplinary action
10 unless the NAIC otherwise orders.

11 (g) SCOPE OF REVIEW.—

12 (1) IN GENERAL.—In any proceeding to review
13 such action, after notice and the opportunity for
14 hearing, the NAIC shall—

15 (A) determine whether the action should be
16 taken;

17 (B) affirm, modify, or rescind the discipli-
18 nary sanction; or

19 (C) remand to the Association for further
20 proceedings.

21 (2) DISMISSAL OF REVIEW.—The NAIC may
22 dismiss a proceeding to review disciplinary action if
23 the NAIC finds that—

24 (A) the specific grounds on which the ac-
25 tion is based exist in fact;

1 (B) the action is in accordance with appli-
2 cable rules and regulations; and

3 (C) such rules and regulations are, and
4 were, applied in a manner consistent with the
5 purposes of this subtitle.

6 **SEC. 329. ASSESSMENTS.**

7 (a) INSURANCE PRODUCERS SUBJECT TO ASSESS-
8 MENT.—The Association may establish such application
9 and membership fees as the Association finds necessary
10 to cover the costs of its operations, including fees made
11 reimbursable to the NAIC under subsection (b), except
12 that, in setting such fees, the Association may not dis-
13 criminate against smaller insurance producers.

14 (b) NAIC ASSESSMENTS.—The NAIC may assess the
15 Association for any costs that the NAIC incurs under this
16 subtitle.

17 **SEC. 330. FUNCTIONS OF THE NAIC.**

18 (a) ADMINISTRATIVE PROCEDURE.—Determinations
19 of the NAIC, for purposes of making rules pursuant to
20 section 328, shall be made after appropriate notice and
21 opportunity for a hearing and for submission of views of
22 interested persons.

23 (b) EXAMINATIONS AND REPORTS.—

24 (1) EXAMINATIONS.—The NAIC may make
25 such examinations and inspections of the Association

1 and require the Association to furnish to the NAIC
2 such reports and records or copies thereof as the
3 NAIC may consider necessary or appropriate in the
4 public interest or to effectuate the purposes of this
5 subtitle.

6 (2) REPORT BY ASSOCIATION.—As soon as
7 practicable after the close of each fiscal year, the As-
8 sociation shall submit to the NAIC a written report
9 regarding the conduct of its business, and the exer-
10 cise of the other rights and powers granted by this
11 subtitle, during such fiscal year. Such report shall
12 include financial statements setting forth the finan-
13 cial position of the Association at the end of such
14 fiscal year and the results of its operations (includ-
15 ing the source and application of its funds) for such
16 fiscal year. The NAIC shall transmit such report to
17 the President and the Congress with such comment
18 thereon as the NAIC determines to be appropriate.

19 **SEC. 331. LIABILITY OF THE ASSOCIATION AND THE DIREC-**
20 **TORS, OFFICERS, AND EMPLOYEES OF THE**
21 **ASSOCIATION.**

22 (a) IN GENERAL.—The Association shall not be
23 deemed to be an insurer or insurance producer within the
24 meaning of any State law, rule, regulation, or order regu-
25 lating or taxing insurers, insurance producers, or other en-

1 titles engaged in the business of insurance, including pro-
2 visions imposing premium taxes, regulating insurer sol-
3 vency or financial condition, establishing guaranty funds
4 and levying assessments, or requiring claims settlement
5 practices.

6 (b) LIABILITY OF THE ASSOCIATION, ITS DIREC-
7 TORS, OFFICERS, AND EMPLOYEES.—Neither the Associa-
8 tion nor any of its directors, officers, or employees shall
9 have any liability to any person for any action taken or
10 omitted in good faith under or in connection with any mat-
11 ter subject to this subtitle.

12 **SEC. 332. ELIMINATION OF NAIC OVERSIGHT.**

13 (a) IN GENERAL.—The Association shall be estab-
14 lished without NAIC oversight and the provisions set forth
15 in section 324, subsections (a), (b), (c), and (e) of section
16 328, and sections 329(b) and 330 of this subtitle shall
17 cease to be effective if, at the end of the 2-year period
18 beginning on the date on which the provisions of this sub-
19 title take effect pursuant to section 321—

20 (1) at least a majority of the States rep-
21 resenting at least 50 percent of the total United
22 States commercial-lines insurance premiums have
23 not satisfied the uniformity or reciprocity require-
24 ments of subsections (a), (b), and (c) of section 321;
25 and

1 (2) the NAIC has not approved the Associa-
2 tion's bylaws as required by section 328 or is unable
3 to operate or supervise the Association, or the Asso-
4 ciation is not conducting its activities as required
5 under this Act.

6 (b) BOARD APPOINTMENTS.—If the repeals required
7 by subsection (a) are implemented, the following shall
8 apply:

9 (1) GENERAL APPOINTMENT POWER.—The
10 President, with the advice and consent of the Sen-
11 ate, shall appoint the members of the Association's
12 Board established under section 326 from lists of
13 candidates recommended to the President by the
14 National Association of Insurance Commissioners.

15 (2) PROCEDURES FOR OBTAINING NATIONAL
16 ASSOCIATION OF INSURANCE COMMISSIONERS AP-
17 POINTMENT RECOMMENDATIONS.—

18 (A) INITIAL DETERMINATION AND REC-
19 ommendations.—After the date on which the
20 provisions of subsection (a) take effect, the
21 NAIC shall, not later than 60 days thereafter,
22 provide a list of recommended candidates to the
23 President. If the NAIC fails to provide a list by
24 that date, or if any list that is provided does
25 not include at least 14 recommended candidates

1 or comply with the requirements of section
2 326(c), the President shall, with the advice and
3 consent of the Senate, make the requisite ap-
4 pointments without considering the views of the
5 NAIC.

6 (B) SUBSEQUENT APPOINTMENTS.—After
7 the initial appointments, the NAIC shall pro-
8 vide a list of at least six recommended can-
9 didates for the Board to the President by Janu-
10 ary 15 of each subsequent year. If the NAIC
11 fails to provide a list by that date, or if any list
12 that is provided does not include at least six
13 recommended candidates or comply with the re-
14 quirements of section 326(c), the President,
15 with the advice and consent of the Senate, shall
16 make the requisite appointments without con-
17 sidering the views of the NAIC.

18 (C) PRESIDENTIAL OVERSIGHT.—

19 (i) REMOVAL.—If the President deter-
20 mines that the Association is not acting in
21 the interests of the public, the President
22 may remove the entire existing Board for
23 the remainder of the term to which the
24 members of the Board were appointed and
25 appoint, with the advice and consent of the

1 Senate, new members to fill the vacancies
2 on the Board for the remainder of such
3 terms.

4 (ii) SUSPENSION OF RULES OR AC-
5 TIONS.—The President, or a person des-
6 ignated by the President for such purpose,
7 may suspend the effectiveness of any rule,
8 or prohibit any action, of the Association
9 which the President or the designee deter-
10 mines is contrary to the public interest.

11 (c) ANNUAL REPORT.—As soon as practicable after
12 the close of each fiscal year, the Association shall submit
13 to the President and to the Congress a written report rel-
14 ative to the conduct of its business, and the exercise of
15 the other rights and powers granted by this subtitle, dur-
16 ing such fiscal year. Such report shall include financial
17 statements setting forth the financial position of the Asso-
18 ciation at the end of such fiscal year and the results of
19 its operations (including the source and application of its
20 funds) for such fiscal year.

21 **SEC. 333. RELATIONSHIP TO STATE LAW.**

22 (a) PREEMPTION OF STATE LAWS.—State laws, reg-
23 ulations, provisions, or other actions purporting to regu-
24 late insurance producers shall be preempted as provided
25 in subsection (b).

1 (b) PROHIBITED ACTIONS.—No State shall—

2 (1) impede the activities of, take any action
3 against, or apply any provision of law or regulation
4 to, any insurance producer because that insurance
5 producer or any affiliate plans to become, has ap-
6 plied to become, or is a member of the Association;

7 (2) impose any requirement upon a member of
8 the Association that it pay different fees to be li-
9 censed or otherwise qualified to do business in that
10 State, including bonding requirements, based on its
11 residency;

12 (3) impose any licensing, appointment, integ-
13 rity, personal or corporate qualifications, education,
14 training, experience, residency, or continuing edu-
15 cation requirement upon a member of the Associa-
16 tion that is different from the criteria for member-
17 ship in the Association or renewal of such member-
18 ship, except that counter-signature requirements im-
19 posed on nonresident producers shall not be deemed
20 to have the effect of limiting or conditioning a pro-
21 ducer's activities because of its residence or place of
22 operations under this section; or

23 (4) implement the procedures of such State's
24 system of licensing or renewing the licenses of insur-

1 ance producers in a manner different from the au-
2 thority of the Association under section 325.

3 (c) SAVINGS PROVISION.—Except as provided in sub-
4 sections (a) and (b), no provision of this section shall be
5 construed as altering or affecting the continuing effective-
6 ness of any law, regulation, provision, or other action of
7 any State which purports to regulate insurance producers,
8 including any such law, regulation, provision, or action
9 which purports to regulate unfair trade practices or estab-
10 lish consumer protections, including countersignature
11 laws.

12 **SEC. 334. COORDINATION WITH OTHER REGULATORS.**

13 (a) COORDINATION WITH STATE INSURANCE REGU-
14 LATORS.—The Association shall have the authority to—

15 (1) issue uniform insurance producer applica-
16 tions and renewal applications that may be used to
17 apply for the issuance or removal of State licenses,
18 while preserving the ability of each State to impose
19 such conditions on the issuance or renewal of a li-
20 cense as are consistent with section 333;

21 (2) establish a central clearinghouse through
22 which members of the Association may apply for the
23 issuance or renewal of licenses in multiple States;
24 and

1 (3) establish or utilize a national database for
2 the collection of regulatory information concerning
3 the activities of insurance producers.

4 (b) COORDINATION WITH THE NATIONAL ASSOCIA-
5 TION OF SECURITIES DEALERS.—The Association shall
6 coordinate with the National Association of Securities
7 Dealers in order to ease any administrative burdens that
8 fall on persons that are members of both associations, con-
9 sistent with the purposes of this subtitle and the Federal
10 securities laws.

11 **SEC. 335. JUDICIAL REVIEW.**

12 (a) JURISDICTION.—The appropriate United States
13 district court shall have exclusive jurisdiction over litiga-
14 tion involving the Association, including disputes between
15 the Association and its members that arise under this sub-
16 title. Suits brought in State court involving the Associa-
17 tion shall be deemed to have arisen under Federal law and
18 therefore be subject to jurisdiction in the appropriate
19 United States district court.

20 (b) EXHAUSTION OF REMEDIES.—An aggrieved per-
21 son shall be required to exhaust all available administra-
22 tive remedies before the Association and the NAIC before
23 it may seek judicial review of an Association decision.

24 (c) STANDARDS OF REVIEW.—The standards set
25 forth in section 553 of title 5, United States Code, shall

1 be applied whenever a rule or bylaw of the Association is
2 under judicial review, and the standards set forth in sec-
3 tion 554 of title 5, United States Code, shall be applied
4 whenever a disciplinary action of the Association is judi-
5 cially reviewed.

6 **SEC. 336. DEFINITIONS.**

7 For purposes of this subtitle, the following definitions
8 shall apply:

9 (1) HOME STATE.—The term “home State”
10 means the State in which the insurance producer
11 maintains its principal place of residence and is li-
12 censed to act as an insurance producer.

13 (2) INSURANCE.—The term “insurance” means
14 any product, other than title insurance, defined or
15 regulated as insurance by the appropriate State in-
16 surance regulatory authority.

17 (3) INSURANCE PRODUCER.—The term “insur-
18 ance producer” means any insurance agent or
19 broker, surplus lines broker, insurance consultant,
20 limited insurance representative, and any other per-
21 son that solicits, negotiates, effects, procures, deliv-
22 ers, renews, continues or binds policies of insurance
23 or offers advice, counsel, opinions or services related
24 to insurance.

1 (4) STATE.—The term “State” includes any
2 State, the District of Columbia, American Samoa,
3 Guam, Puerto Rico, and the United States Virgin
4 Islands.

5 (5) STATE LAW.—The term “State law” in-
6 cludes all laws, decisions, rules, regulations, or other
7 State action having the effect of law, of any State.
8 A law of the United States applicable only to the
9 District of Columbia shall be treated as a State law
10 rather than a law of the United States.

11 **Subtitle D—Rental Car Agency**
12 **Insurance Activities**

13 **SEC. 341. STANDARD OF REGULATION FOR MOTOR VEHI-**
14 **CLE RENTALS.**

15 (a) PROTECTION AGAINST RETROACTIVE APPLICA-
16 TION OF REGULATORY AND LEGAL ACTION.—Except as
17 provided in subsection (b), during the 3-year period begin-
18 ning on the date of the enactment of this Act, it shall
19 be a presumption that no State law imposes any licensing,
20 appointment, or education requirements on any person
21 who solicits the purchase of or sells insurance connected
22 with, and incidental to, the lease or rental of a motor vehi-
23 cle.

1 (b) PREEMINENCE OF STATE INSURANCE LAW.—No
2 provision of this section shall be construed as altering the
3 validity, interpretation, construction, or effect of—

4 (1) any State statute;

5 (2) the prospective application of any court
6 judgment interpreting or applying any State statute;
7 or

8 (3) the prospective application of any final
9 State regulation, order, bulletin, or other statutorily
10 authorized interpretation or action,

11 which, by its specific terms, expressly regulates or exempts
12 from regulation any person who solicits the purchase of
13 or sells insurance connected with, and incidental to, the
14 short-term lease or rental of a motor vehicle.

15 (c) SCOPE OF APPLICATION.—This section shall
16 apply with respect to—

17 (1) the lease or rental of a motor vehicle for a
18 total period of 90 consecutive days or less; and

19 (2) insurance which is provided in connection
20 with, and incidentally to, such lease or rental for a
21 period of consecutive days not exceeding the lease or
22 rental period.

23 (d) MOTOR VEHICLE DEFINED.—For purposes of
24 this section, the term “motor vehicle” has the meaning

1 given to such term in section 13102 of title 49, United
2 States Code.

3 **Subtitle E—Confidentiality**

4 **SEC. 351. CONFIDENTIALITY OF HEALTH AND MEDICAL IN-** 5 **FORMATION.**

6 (a) IN GENERAL.—A company which underwrites or
7 sells annuities contracts or contracts insuring, guaran-
8 teeing, or indemnifying against loss, harm, damage, ill-
9 ness, disability, or death (other than credit-related insur-
10 ance) and any subsidiary or affiliate thereof shall maintain
11 a practice of protecting the confidentiality of individually
12 identifiable customer health and medical and genetic infor-
13 mation and may disclose such information only—

14 (1) with the consent, or at the direction, of the
15 customer;

16 (2) for insurance underwriting and reinsuring
17 policies, account administration, reporting, inves-
18 tigating, or preventing fraud or material misrepresen-
19 tation, processing premium payments, processing
20 insurance claims, administering insurance benefits
21 (including utilization review activities), providing in-
22 formation to the customer's physician or other
23 health care provider, participating in research
24 projects, enabling the purchase, transfer, merger, or
25 sale of any insurance-related business, or as other-

1 wise required or specifically permitted by Federal or
2 State law; or

3 (3) in connection with—

4 (A) the authorization, settlement, billing,
5 processing, clearing, transferring, reconciling,
6 or collection of amounts charged, debited, or
7 otherwise paid using a debit, credit, or other
8 payment card or account number, or by other
9 payment means;

10 (B) the transfer of receivables, accounts,
11 or interest therein;

12 (C) the audit of the debit, credit, or other
13 payment information;

14 (D) compliance with Federal, State, or
15 local law;

16 (E) compliance with a properly authorized
17 civil, criminal, or regulatory investigation by
18 Federal, State, or local authorities as governed
19 by the requirements of this section; or

20 (F) fraud protection, risk control, resolving
21 customer disputes or inquiries, communicating
22 with the person to whom the information re-
23 lates, or reporting to consumer reporting agen-
24 cies.

1 (b) STATE ACTIONS FOR VIOLATIONS.—In addition
2 to such other remedies as are provided under State law,
3 if the chief law enforcement officer of a State, State insur-
4 ance regulator, or an official or agency designated by a
5 State, has reason to believe that any person has violated
6 or is violating this title, the State may bring an action
7 to enjoin such violation in any appropriate United States
8 district court or in any other court of competent jurisdic-
9 tion.

10 (c) EFFECTIVE DATE; SUNSET.—

11 (1) EFFECTIVE DATE.—Except as provided in
12 paragraph (2), subsection (a) shall take effect on
13 February 1, 2000.

14 (2) SUNSET.—Subsection (a) shall not take ef-
15 fect if, or shall cease to be effective on and after the
16 date on which, legislation is enacted that satisfies
17 the requirements in section 264(c)(1) of the Health
18 Insurance Portability and Accountability Act of
19 1996 (Public Law 104–191; 110 Stat. 2033).

20 (d) CONSULTATION.—While subsection (a) is in ef-
21 fect, State insurance regulatory authorities, through the
22 National Association of Insurance Commissioners, shall
23 consult with the Secretary of Health and Human Services
24 in connection with the administration of such subsection.

1 **TITLE IV—UNITARY SAVINGS**
2 **AND LOAN HOLDING COMPA-**
3 **NIES**

4 **SEC. 401. PROHIBITION ON NEW UNITARY SAVINGS AND**
5 **LOAN HOLDING COMPANIES.**

6 (a) IN GENERAL.—Section 10(c) of the Home Own-
7 ers’ Loan Act (12 U.S.C. 1467a(c)) is amended by adding
8 at the end the following new paragraph:

9 “(9) TERMINATION OF EXPANDED POWERS FOR
10 NEW UNITARY HOLDING COMPANY.—

11 “(A) IN GENERAL.—Subject to subpara-
12 graph (B) and notwithstanding paragraph (3),
13 no company may directly or indirectly, includ-
14 ing through any merger, consolidation, or other
15 type of business combination, acquire control of
16 a savings association after March 4, 1999, un-
17 less the company is engaged, directly or indi-
18 rectly (including through a subsidiary other
19 than a savings association), only in activities
20 that are permitted—

21 “(i) under paragraph (1)(C) or (2); or

22 “(ii) for financial holding companies
23 under section 6(c) of the Bank Holding
24 Company Act of 1956.

1 “(B) EXISTING UNITARY HOLDING COMPA-
2 NIES AND THE SUCCESSORS TO SUCH COMPA-
3 NIES.—Subparagraph (A) shall not apply, and
4 paragraph (3) shall continue to apply, to a com-
5 pany (or any subsidiary of such company)
6 that—

7 “(i) either—

8 “(I) acquired one or more sav-
9 ings associations described in para-
10 graph (3) pursuant to applications at
11 least one of which was filed on or be-
12 fore March 4, 1999; or

13 “(II) subject to subparagraph
14 (C), became a savings and loan hold-
15 ing company by acquiring control of
16 the company described in subclause
17 (I); and

18 “(ii) continues to control the savings
19 association referred to in clause (i)(II) or
20 the successor to any such savings associa-
21 tion.

22 “(C) NOTICE PROCESS FOR NONFINANCIAL
23 ACTIVITIES BY A SUCCESSOR UNITARY HOLDING
24 COMPANY.—

1 “(i) NOTICE REQUIRED.—Subpara-
2 graph (B) shall not apply to any company
3 described in subparagraph (B)(i)(II) which
4 engages, directly or indirectly, in any activ-
5 ity other than activities described in
6 clauses (i) and (ii) of subparagraph (A),
7 unless—

8 “(I) in addition to an application
9 to the Director under this section to
10 become a savings and loan holding
11 company, the company submits a no-
12 tice to the Board of Governors of the
13 Federal Reserve System of such non-
14 financial activities in the same man-
15 ner as a notice of nonbanking activi-
16 ties is filed with the Board under sec-
17 tion 4(j) of the Bank Holding Com-
18 pany Act of 1956; and

19 “(II) before the end of the appli-
20 cable period under such section 4(j),
21 the Board either approves or does not
22 disapprove of the continuation of such
23 activities by such company, directly or
24 indirectly, after becoming a savings
25 and loan holding company.

1 “(ii) PROCEDURE.—Section 4(j) of
2 the Bank Holding Company Act of 1956,
3 including the standards for review, shall
4 apply to any notice filed with the Board
5 under this subparagraph in the same man-
6 ner as it applies to notices filed under such
7 section.”.

8 (b) TECHNICAL AND CONFORMING AMENDMENT.—
9 Section 10(c)(3) of the Home Owners’ Loan Act (12
10 U.S.C. 1467a(c)(3)) is amended by striking “Notwith-
11 standing” and inserting “Except as provided in paragraph
12 (9) and notwithstanding”.

13 (c) CONFORMING AMENDMENT.—Section 10(o)(5) of
14 the Home Owners’ Loan Act (12 U.S.C. 1467a(o)(5)) is
15 amended—

16 (1) in subparagraph (E), by striking “, except
17 subparagraph (B)”;

18 (2) by adding at the end the following new sub-
19 paragraph:

20 “(F) In the case of a mutual holding com-
21 pany which is a savings and loan holding com-
22 pany described in subsection (c)(3), engaging in
23 the activities permitted for financial holding
24 companies under section 6(c) of the Bank Hold-
25 ing Company Act of 1956.”.

1 **SEC. 402. RETENTION OF “FEDERAL” IN NAME OF CON-**
2 **VERTED FEDERAL SAVINGS ASSOCIATION.**

3 Section 2 of the Act entitled “An Act to enable na-
4 tional banking associations to increase their capital stock
5 and to change their names or locations”, approved May
6 1, 1886 (12 U.S.C. 30), is amended by adding at the end
7 the following new subsection:

8 “(d) RETENTION OF ‘FEDERAL’ IN NAME OF CON-
9 VERTED FEDERAL SAVINGS ASSOCIATION.—

10 “(1) IN GENERAL.—Notwithstanding subsection
11 (a) or any other provision of law, any depository in-
12 stitution the charter of which is converted from that
13 of a Federal savings association to a national bank
14 or a State bank after the date of the enactment of
15 the Financial Services Act of 1999 may retain the
16 term ‘Federal’ in the name of such institution if
17 such depository institution remains an insured de-
18 pository institution.

19 “(2) DEFINITIONS.—For purposes of this sub-
20 section, the terms ‘depository institution’, ‘insured
21 depository institution’, ‘national bank’, and ‘State
22 bank’ have the same meanings as in section 3 of the
23 Federal Deposit Insurance Act.”.

1 **TITLE V—PRIVACY**
2 **Subtitle A—Disclosure of**
3 **Nonpublic Personal Information**

4 **SEC. 501. PROTECTION OF NONPUBLIC PERSONAL INFOR-**
5 **MATION.**

6 (a) **PRIVACY OBLIGATION POLICY.**—It is the policy
7 of the Congress that each financial institution has an af-
8 firmative and continuing obligation to respect the privacy
9 of its customers and to protect the security and confiden-
10 tiality of those customers' nonpublic personal information.

11 (b) **FINANCIAL INSTITUTIONS SAFEGUARDS.**—In fur-
12 therance of the policy in subsection (a), each agency or
13 authority described in section 505(a) shall establish appro-
14 priate standards for the financial institutions subject to
15 their jurisdiction relating to administrative, technical, and
16 physical safeguards—

17 (1) to insure the security and confidentiality of
18 customer records and information;

19 (2) to protect against any anticipated threats or
20 hazards to the security or integrity of such records;
21 and

22 (3) to protect against unauthorized access to or
23 use of such records or information which could re-
24 sult in substantial harm or inconvenience to any cus-
25 tomer.

1 **SEC. 502. OBLIGATIONS WITH RESPECT TO DISCLOSURES**
2 **OF PERSONAL INFORMATION.**

3 (a) NOTICE REQUIREMENTS.—Except as otherwise
4 provided in this subtitle, a financial institution may not,
5 directly or through any affiliate, disclose to a nonaffiliated
6 third party any nonpublic personal information, unless
7 such financial institution provides or has provided to the
8 consumer a notice that complies with section 503(b).

9 (b) OPT OUT.—

10 (1) IN GENERAL.—A financial institution may
11 not disclose nonpublic personal information to non-
12 affiliated third parties unless—

13 (A) such financial institution clearly and
14 conspicuously discloses to the consumer, in
15 writing or in electronic form (or other form per-
16 mitted by the regulations prescribed under sec-
17 tion 504), that such information may be dis-
18 closed to such third parties;

19 (B) the consumer is given the opportunity,
20 before the time that such information is initially
21 disclosed, to direct that such information not be
22 disclosed to such third parties; and

23 (C) the consumer is given an explanation
24 of how the consumer can exercise that non-
25 disclosure option.

1 (2) EXCEPTION.—This subsection shall not pre-
2 vent a financial institution from providing nonpublic
3 personal information to a nonaffiliated third party to
4 perform services or functions on behalf of the finan-
5 cial institution, including marketing of the financial
6 institution’s own products or services or financial
7 products or services offered pursuant to joint agree-
8 ments between two or more financial institutions
9 that comply with the requirements imposed by the
10 regulations prescribed under section 504, if the fi-
11 nancial institution fully discloses the providing of
12 such information and enters into a contractual
13 agreement with the third party that requires the
14 third party to maintain the confidentiality of such
15 information.

16 (c) LIMITS ON REUSE OF INFORMATION.—Except as
17 otherwise provided in this subtitle, a nonaffiliated third
18 party that receives from a financial institution nonpublic
19 personal information under this section shall not, directly
20 or through an affiliate of such receiving third party, dis-
21 close such information to any other person that is a non-
22 affiliated third party of both the financial institution and
23 such receiving third party, unless such disclosure would
24 be lawful if made directly to such other person by the fi-
25 nancial institution.

1 (d) LIMITATIONS ON THE SHARING OF ACCOUNT
2 NUMBER INFORMATION FOR MARKETING PURPOSES.—A
3 financial institution shall not disclose an account number
4 or similar form of access number or access code for a cred-
5 it card account, deposit account, or transaction account
6 of a consumer to any nonaffiliated third party for use in
7 telemarketing, direct mail marketing, or other marketing
8 through electronic mail to the consumer.

9 (e) GENERAL EXCEPTIONS.—Subsections (a) and (b)
10 shall not prohibit the disclosure of nonpublic personal
11 information—

12 (1) as necessary to effect, administer, or en-
13 force a transaction requested or authorized by the
14 consumer, or in connection with—

15 (A) servicing or processing a financial
16 product or service requested or authorized by
17 the consumer;

18 (B) maintaining or servicing the con-
19 sumer's account with the financial institution;
20 or

21 (C) a proposed or actual securitization,
22 secondary market sale (including sales of serv-
23 icing rights), or similar transaction related to a
24 transaction of the consumer;

1 (2) with the consent or at the direction of the
2 consumer;

3 (3) to protect the confidentiality or security of
4 its records pertaining to the consumer, the service or
5 product, or the transaction therein, or to protect
6 against or prevent actual or potential fraud, unau-
7 thorized transactions, claims, or other liability, for
8 required institutional risk control, or for resolving
9 customer disputes or inquiries, or to persons holding
10 a beneficial interest relating to the consumer, or to
11 persons acting in a fiduciary capacity on behalf of
12 the consumer;

13 (4) to provide information to insurance rate ad-
14 visory organizations, guaranty funds or agencies, ap-
15 plicable rating agencies of the financial institution,
16 persons assessing the institution's compliance with
17 industry standards, and the institution's attorneys,
18 accountants, and auditors;

19 (5) to the extent specifically permitted or re-
20 quired under other provisions of law and in accord-
21 ance with the Right to Financial Privacy Act of
22 1978, to law enforcement agencies (including a Fed-
23 eral functional regulator, a State insurance author-
24 ity, or the Federal Trade Commission), self-regu-

1 latory organizations, or for an investigation on a
2 matter related to public safety;

3 (6) to a consumer reporting agency in accord-
4 ance with the Fair Credit Reporting Act, or in ac-
5 cordance with interpretations of such Act by the
6 Board of Governors of the Federal Reserve System
7 or the Federal Trade Commission, including inter-
8 pretations published as commentary (16 CFR 601–
9 622);

10 (7) in connection with a proposed or actual
11 sale, merger, transfer, or exchange of all or a por-
12 tion of a business or operating unit if the disclosure
13 of nonpublic personal information concerns solely
14 consumers of such business or unit; or

15 (8) to comply with Federal, State, or local laws,
16 rules, and other applicable legal requirements; to
17 comply with a properly authorized civil, criminal, or
18 regulatory investigation or subpoena by Federal,
19 State, or local authorities; or to respond to judicial
20 process or government regulatory authorities having
21 jurisdiction over the financial institution for exam-
22 ination, compliance, or other purposes as authorized
23 by law.

1 **SEC. 503. DISCLOSURE OF INSTITUTION PRIVACY POLICY.**

2 (a) DISCLOSURE REQUIRED.—A financial institution
3 shall clearly and conspicuously disclose to each consumer,
4 at the time of establishing the customer relationship with
5 the consumer and not less than annually, in writing or
6 in electronic form (or other form permitted by the regula-
7 tions prescribed under section 504), its policies and prac-
8 tices with respect to protecting the nonpublic personal in-
9 formation of consumers in accordance with the rules pre-
10 scribed under section 504.

11 (b) INFORMATION TO BE INCLUDED.—The disclosure
12 required by subsection (a) shall include—

13 (1) the policy and practices of the institution
14 with respect to disclosing nonpublic personal infor-
15 mation to nonaffiliated third parties, other than
16 agents of the institution, consistent with section 502
17 of this subtitle, and including—

18 (A) the categories of persons to whom the
19 information is or may be disclosed, other than
20 the persons to whom the information may be
21 provided pursuant to section 502(e); and

22 (B) the practices and policies of the insti-
23 tution with respect to disclosing of nonpublic
24 personal information of persons who have
25 ceased to be customers of the financial institu-
26 tion;

1 (2) the categories of nonpublic personal infor-
2 mation that are collected by the financial institution;

3 (3) the policies that the institution maintains to
4 protect the confidentiality and security of nonpublic
5 personal information in accordance with section 501;
6 and

7 (4) the disclosures required, if any, under sec-
8 tion 603(d)(2)(A)(iii) of the Fair Credit Reporting
9 Act.

10 **SEC. 504. RULEMAKING.**

11 (a) REGULATORY AUTHORITY.—The Federal bank-
12 ing agencies, the National Credit Union Association, the
13 Secretary of the Treasury, and the Securities and Ex-
14 change Commission, shall jointly prescribe, after consulta-
15 tion with the Federal Trade Commission, and representa-
16 tives of State insurance authorities designated by the Na-
17 tional Association of Insurance Commissioners, such regu-
18 lations as may be necessary to carry out the purposes of
19 this subtitle. Such regulations shall be prescribed in ac-
20 cordance with applicable requirements of the title 5,
21 United States Code, and shall be issued in final form with-
22 in 6 months after the date of enactment of this Act.

23 (b) AUTHORITY TO GRANT EXCEPTIONS.—The regu-
24 lations prescribed under subsection (a) may include such
25 additional exceptions to subsections (a) and (b) of section

1 502 as are deemed consistent with the purposes of this
2 subtitle.

3 **SEC. 505. ENFORCEMENT.**

4 (a) IN GENERAL.—This subtitle and the rules pre-
5 scribed thereunder shall be enforced by the Federal func-
6 tional regulators, the State insurance authorities, and the
7 Federal Trade Commission with respect to financial insti-
8 tutions subject to their jurisdiction under applicable law,
9 as follows:

10 (1) Under section 8 of the Federal Deposit In-
11 surance Act, in the case of—

12 (A) national banks, Federal branches and
13 Federal agencies of foreign banks, and any sub-
14 sidiaries of such entities, by the Office of the
15 Comptroller of the Currency;

16 (B) member banks of the Federal Reserve
17 System (other than national banks), branches
18 and agencies of foreign banks (other than Fed-
19 eral branches, Federal agencies, and insured
20 State branches of foreign banks), commercial
21 lending companies owned or controlled by for-
22 eign banks, organizations operating under sec-
23 tion 25 or 25A of the Federal Reserve Act,
24 bank holding companies and their nonbank sub-
25 sidiaries or affiliates (except broker-dealers, af-

1 filiates providing insurance, investment compa-
2 nies, and investment advisers), by the Board of
3 Governors of the Federal Reserve System;

4 (C) banks insured by the Federal Deposit
5 Insurance Corporation (other than members of
6 the Federal Reserve System), insured State
7 branches of foreign banks, and any subsidiaries
8 of such entities, by the Board of Directors of
9 the Federal Deposit Insurance Corporation; and

10 (D) savings association the deposits of
11 which are insured by the Federal Deposit In-
12 surance Corporation, and any subsidiaries of
13 such a savings association, by the Director of
14 the Office of Thrift Supervision.

15 (2) Under the Federal Credit Union Act, by the
16 Administrator of the National Credit Union Admin-
17 istration with respect to any Federal or state char-
18 tered credit union, and any subsidiaries of such an
19 entity.

20 (3) Under the Farm Credit Act of 1971, by the
21 Farm Credit Administration with respect to the
22 Federal Agricultural Mortgage Corporation, any
23 Federal land bank, Federal land bank association,
24 Federal intermediate credit bank, or production
25 credit association.

1 (4) Under the Securities Exchange Act of 1934,
2 by the Securities and Exchange Commission with re-
3 spect to any broker-dealer.

4 (5) Under the Investment Company Act of
5 1940, by the Securities and Exchange Commission
6 with respect to investment companies.

7 (6) Under the Investment Advisers Act of 1940,
8 by the Securities and Exchange Commission with re-
9 spect to investment advisers registered with the
10 Commission under such Act.

11 (7) Under Federal Housing Enterprises Finan-
12 cial Safety and Soundness Act of 1992 (12 U. S. C.
13 4501 et seq.), by the Office of Federal Housing En-
14 terprise Oversight with respect to the Federal Na-
15 tional Mortgage Association and the Federal Home
16 Loan Mortgage Corporation.

17 (8) Under the Federal Home Loan Bank Act,
18 by the Federal Housing Finance Board with respect
19 to Federal home loan banks.

20 (9) Under State insurance law, in the case of
21 any person engaged in providing insurance, by the
22 State insurance authority of the State in which the
23 person is domiciled, subject to section 104 of this
24 Act.

1 (10) Under the Federal Trade Commission Act,
2 by the Federal Trade Commission for any other fi-
3 nancial institution that is not subject to the jurisdic-
4 tion of any agency or authority under paragraphs
5 (1) through (9) of this subsection.

6 (b) ENFORCEMENT OF SECTION 501.—

7 (1) IN GENERAL.—Except as provided in para-
8 graph (2), the agencies and authorities described in
9 subsection (a) shall implement the standards pre-
10 scribed under section 501(b) in the same manner, to
11 the extent practicable, as standards prescribed pur-
12 suant to subsection (a) of section 39 of the Federal
13 Deposit Insurance Act are implemented pursuant to
14 such section.

15 (2) EXCEPTION.—The agencies and authorities
16 described in paragraphs (4), (5), (6), (9), and (10)
17 of subsection (a) shall implement the standards pre-
18 scribed under section 501(b) by rule with respect to
19 the financial institutions subject to their respective
20 jurisdictions under subsection (a).

21 (c) DEFINITIONS.—The terms used in subsection
22 (a)(1) that are not defined in this subtitle or otherwise
23 defined in section 3(s) of the Federal Deposit Insurance
24 Act shall have the meaning given to them in section 1(b)
25 of the International Banking Act of 1978.

1 **SEC. 506. FAIR CREDIT REPORTING ACT AMENDMENT.**

2 (a) AMENDMENT.—Section 621 of the Fair Credit
3 Reporting Act (15 U.S.C. 1681s) is amended—

4 (1) in subsection (d), by striking everything fol-
5 lowing the end of the second sentence; and

6 (2) by striking subsection “(e)” and inserting in
7 lieu thereof the following:

8 “(e) REGULATORY AUTHORITY.—

9 “(1) The Federal banking agencies referred to
10 in paragraphs (1) and (2) of subsection (b) shall
11 jointly prescribe such regulations as necessary to
12 carry out the purposes of this Act with respect to
13 any persons identified under paragraphs (1) and (2)
14 of subsection (b), or to the holding companies and
15 affiliates of such persons.

16 “(2) The Administrator of the National Credit
17 Union Administration shall prescribe such regula-
18 tions as necessary to carry out the purposes of this
19 Act with respect to any persons identified under
20 paragraph (3) of subsection (b).”.

21 (b) CONFORMING AMENDMENT.—Section 621(a) of
22 the Fair Credit Reporting Act (15 U.S.C. 1681s(a)) is
23 amended by striking paragraph (4).

24 **SEC. 507. RELATION TO OTHER PROVISIONS.**

25 This subtitle shall not apply to any information to
26 which subtitle D of title III applies.

1 **SEC. 508. STUDY OF INFORMATION SHARING AMONG FI-**
2 **NANCIAL AFFILIATES.**

3 (a) IN GENERAL.—The Secretary of the Treasury, in
4 conjunction with the Federal functional regulators and the
5 Federal Trade Commission, shall conduct a study of infor-
6 mation sharing practices among financial institutions and
7 their affiliates. Such study shall include—

8 (1) the purposes for the sharing of confidential
9 customer information with affiliates or with non-
10 affiliated third parties;

11 (2) the extent and adequacy of security protec-
12 tions for such information;

13 (3) the potential risks for customer privacy of
14 such sharing of information;

15 (4) the potential benefits for financial institu-
16 tions and affiliates of such sharing of information;

17 (5) the potential benefits for customers of such
18 sharing of information;

19 (6) the adequacy of existing laws to protect cus-
20 tomer privacy;

21 (7) the adequacy of financial institution privacy
22 policy and privacy rights disclosure under existing
23 law;

24 (8) the feasibility of different approaches, in-
25 cluding opt-out and opt-in, to permit customers to

1 direct that confidential information not be shared
2 with affiliates and nonaffiliated third parties; and

3 (9) the feasibility of restricting sharing of infor-
4 mation for specific uses or of permitting customers
5 to direct the uses for which information may be
6 shared.

7 (b) CONSULTATION.—The Secretary shall consult
8 with representatives of State insurance authorities des-
9 ignated by the National Association of Insurance Commis-
10 sioners, and also with financial services industry, con-
11 sumer organizations and privacy groups, and other rep-
12 resentatives of the general public, in formulating and con-
13 ducting the study required by subsection (a).

14 (c) REPORT.—Before the end of the 6-month period
15 beginning on the date of the enactment of this Act, the
16 Secretary shall submit a report to the Congress containing
17 the findings and conclusions of the study required under
18 subsection (a), together with such recommendations for
19 legislative or administrative action as may be appropriate.

20 **SEC. 509. DEFINITIONS.**

21 As used in this subtitle:

22 (1) FEDERAL BANKING AGENCY.—The term
23 “Federal banking agency” has the meanings given
24 to such terms in section 3 of the Federal Deposit In-
25 surance Act.

1 (2) FEDERAL FUNCTIONAL REGULATOR.—The
2 term “Federal functional regulator” means—

3 (A) the Board of Governors of the Federal
4 Reserve System;

5 (B) the Office of the Comptroller of the
6 Currency;

7 (C) the Board of Directors of the Federal
8 Deposit Insurance Corporation;

9 (D) the Director of the Office of Thrift
10 Supervision;

11 (E) the National Credit Union Administra-
12 tion Board;

13 (F) the Farm Credit Administration; and

14 (G) the Securities and Exchange Commis-
15 sion.

16 (3) FINANCIAL INSTITUTION.—The term “fi-
17 nancial institution” means any institution the busi-
18 ness of which is engaging in financial activities or
19 activities that are incidental to financial activities, as
20 described in section 6(c) of the Bank Holding Com-
21 pany Act of 1956.

22 (4) NONPUBLIC PERSONAL INFORMATION.—

23 (A) The term “nonpublic personal informa-
24 tion” means personally identifiable financial
25 information—

1 (i) provided by a consumer to a finan-
2 cial institution;

3 (ii) resulting from any transaction
4 with the consumer or the service performed
5 for the consumer; or

6 (iii) otherwise obtained by the finan-
7 cial institution.

8 (B) Such term does not include publicly
9 available information, as such term is defined
10 by the regulations prescribed under section 504.

11 (C) Notwithstanding subparagraph (B),
12 such term shall include any list, description, or
13 other grouping of consumers (and publicly
14 available information pertaining to them) that
15 is derived using any personally identifiable in-
16 formation other than publicly available informa-
17 tion.

18 (5) NONAFFILIATED THIRD PARTIES.—The
19 term “nonaffiliated third parties” means any entity
20 that is not an affiliate of, or related by common
21 ownership or affiliated by corporate control with, the
22 financial institution, but does not include a joint em-
23 ployee of such institution.

1 (6) AFFILIATE.—The term “affiliate” means
2 any company that controls, is controlled by, or is
3 under common control with another company.

4 (7) NECESSARY TO EFFECT, ADMINISTER, OR
5 ENFORCE.—The term “as necessary to effect, ad-
6 minister or enforce the transaction” means—

7 (A) the disclosure is required, or is a
8 usual, appropriate or acceptable method, to
9 carry out the transaction or the product or
10 service business of which the transaction is a
11 part, and record or service or maintain the con-
12 sumer’s account in the ordinary course of pro-
13 viding the financial service or financial product,
14 or to administer or service benefits or claims re-
15 lating to the transaction or the product or serv-
16 ice business of which it is a part, and
17 includes—

18 (i) providing the consumer or the con-
19 sumer’s agent or broker with a confirma-
20 tion, statement, or other record of the
21 transaction, or information on the status
22 or value of the financial service or financial
23 product; and

24 (ii) the accrual or recognition of in-
25 centives or bonuses associated with the

1 transaction that are provided by the finan-
2 cial institution or any other party;

3 (B) the disclosure is required, or is one of
4 the lawful or appropriate methods, to enforce
5 the rights of the financial institution or of other
6 persons engaged in carrying out the financial
7 transaction, or providing the product or service;

8 (C) the disclosure is required, or is a
9 usual, appropriate, or acceptable method, for
10 insurance underwriting at the consumer's re-
11 quest or for reinsurance purposes, or for any of
12 the following purposes as they relate to a con-
13 sumer's insurance: account administration, re-
14 porting, investigating, or preventing fraud or
15 material misrepresentation, processing premium
16 payments, processing insurance claims, admin-
17 istering insurance benefits (including utilization
18 review activities), participating in research
19 projects, or as otherwise required or specifically
20 permitted by Federal or State law; or

21 (D) the disclosure is required, or is a
22 usual, appropriate or acceptable method, in con-
23 nection with—

24 (i) the authorization, settlement, bill-
25 ing, processing, clearing, transferring, rec-

1 oncing, or collection of amounts charged,
2 debited, or otherwise paid using a debit,
3 credit or other payment card, check, or ac-
4 count number, or by other payment means;

5 (ii) the transfer of receivables, ac-
6 counts or interests therein; or

7 (iii) the audit of debit, credit or other
8 payment information.

9 (8) STATE INSURANCE AUTHORITY.—The term
10 “State insurance authority” means, in the case of
11 any person engaged in providing insurance, the
12 State insurance authority of the State in which the
13 person is domiciled.

14 (9) CONSUMER.—The term “consumer” means
15 an individual who obtains, from a financial institu-
16 tion, financial products or services which are to be
17 used primarily for personal, family, or household
18 purposes, and also means the legal representative of
19 such an individual.

20 (10) JOINT AGREEMENT.—The term “joint
21 agreement” means a formal written contract pursu-
22 ant to which two or more financial institutions joint-
23 ly offer, endorse, or sponsor a financial product or
24 service, and any payments between the parties are
25 based on business or profit generated.

1 **SEC. 510. EFFECTIVE DATE.**

2 This subtitle shall take effect 6 months after the date
3 on which the rules under section 503 are promulgated,
4 except—

5 (1) to the extent that a later date is specified
6 in such rules; and

7 (2) that section 506 shall be effective upon en-
8 actment.

9 **Subtitle B—Fraudulent Access to**
10 **Financial Information**

11 **SEC. 521. PRIVACY PROTECTION FOR CUSTOMER INFORMA-**
12 **TION OF FINANCIAL INSTITUTIONS.**

13 (a) PROHIBITION ON OBTAINING CUSTOMER INFOR-
14 MATION BY FALSE PRETENSES.—It shall be a violation
15 of this subtitle for any person to obtain or attempt to ob-
16 tain, or cause to be disclosed or attempt to cause to be
17 disclosed to any person, customer information of a finan-
18 cial institution relating to another person—

19 (1) by making a false, fictitious, or fraudulent
20 statement or representation to an officer, employee,
21 or agent of a financial institution;

22 (2) by making a false, fictitious, or fraudulent
23 statement or representation to a customer of a fi-
24 nancial institution; or

25 (3) by providing any document to an officer,
26 employee, or agent of a financial institution, know-

1 ing that the document is forged, counterfeit, lost, or
2 stolen, was fraudulently obtained, or contains a
3 false, fictitious, or fraudulent statement or represen-
4 tation.

5 (b) PROHIBITION ON SOLICITATION OF A PERSON TO
6 OBTAIN CUSTOMER INFORMATION FROM FINANCIAL IN-
7 STITUTION UNDER FALSE PRETENSES.—It shall be a vio-
8 lation of this subtitle to request a person to obtain cus-
9 tomer information of a financial institution, knowing that
10 the person will obtain, or attempt to obtain, the informa-
11 tion from the institution in any manner described in sub-
12 section (a).

13 (c) NONAPPLICABILITY TO LAW ENFORCEMENT
14 AGENCIES.—No provision of this section shall be con-
15 strued so as to prevent any action by a law enforcement
16 agency, or any officer, employee, or agent of such agency,
17 to obtain customer information of a financial institution
18 in connection with the performance of the official duties
19 of the agency.

20 (d) NONAPPLICABILITY TO FINANCIAL INSTITUTIONS
21 IN CERTAIN CASES.—No provision of this section shall be
22 construed so as to prevent any financial institution, or any
23 officer, employee, or agent of a financial institution, from
24 obtaining customer information of such financial institu-
25 tion in the course of—

1 (1) testing the security procedures or systems
2 of such institution for maintaining the confiden-
3 tiality of customer information;

4 (2) investigating allegations of misconduct or
5 negligence on the part of any officer, employee, or
6 agent of the financial institution; or

7 (3) recovering customer information of the fi-
8 nancial institution which was obtained or received by
9 another person in any manner described in sub-
10 section (a) or (b).

11 (e) NONAPPLICABILITY TO INSURANCE INSTITU-
12 TIONS FOR INVESTIGATION OF INSURANCE FRAUD.—No
13 provision of this section shall be construed so as to prevent
14 any insurance institution, or any officer, employee, or
15 agency of an insurance institution, from obtaining infor-
16 mation as part of an insurance investigation into criminal
17 activity, fraud, material misrepresentation, or material
18 nondisclosure that is authorized for such institution under
19 State law, regulation, interpretation, or order.

20 (f) NONAPPLICABILITY TO CERTAIN TYPES OF CUS-
21 TOMER INFORMATION OF FINANCIAL INSTITUTIONS.—No
22 provision of this section shall be construed so as to prevent
23 any person from obtaining customer information of a fi-
24 nancial institution that otherwise is available as a public

1 record filed pursuant to the securities laws (as defined in
2 section 3(a)(47) of the Securities Exchange Act of 1934).

3 (g) NONAPPLICABILITY TO COLLECTION OF CHILD
4 SUPPORT JUDGMENTS.—No provision of this section shall
5 be construed to prevent any State-licensed private investi-
6 gator, or any officer, employee, or agent of such private
7 investigator, from obtaining customer information of a fi-
8 nancial institution, to the extent reasonably necessary to
9 collect child support from a person adjudged to have been
10 delinquent in his or her obligations by a Federal or State
11 court, and to the extent that such action by a State-li-
12 censed private investigator is not unlawful under any other
13 Federal or State law or regulation, and has been author-
14 ized by an order or judgment of a court of competent juris-
15 diction.

16 **SEC. 522. ADMINISTRATIVE ENFORCEMENT.**

17 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
18 SION.—Compliance with this subtitle shall be enforced by
19 the Federal Trade Commission in the same manner and
20 with the same power and authority as the Commission has
21 under the title VIII, the Fair Debt Collection Practices
22 Act, to enforce compliance with such title.

23 (b) NOTICE OF ACTIONS.—The Federal Trade Com-
24 mission shall—

1 (1) notify the Securities and Exchange Commis-
2 sion whenever the Federal Trade Commission initi-
3 ates an investigation with respect to a financial in-
4 stitution subject to regulation by the Securities and
5 Exchange Commission;

6 (2) notify the Federal banking agency (as de-
7 fined in section 3(z) of the Federal Deposit Insur-
8 ance Act) whenever the Commission initiates an in-
9 vestigation with respect to a financial institution
10 subject to regulation by such Federal banking agen-
11 cy; and

12 (3) notify the appropriate State insurance regu-
13 lator whenever the Commission initiates an inves-
14 tigation with respect to a financial institution sub-
15 ject to regulation by such regulator.

16 **SEC. 523. CRIMINAL PENALTY.**

17 (a) IN GENERAL.—Whoever knowingly and inten-
18 tionally violates, or knowingly and intentionally attempts
19 to violate, section 521 shall be fined in accordance with
20 title 18, United States Code, or imprisoned for not more
21 than 5 years, or both.

22 (b) ENHANCED PENALTY FOR AGGRAVATED
23 CASES.—Whoever violates, or attempts to violate, section
24 521 while violating another law of the United States or
25 as part of a pattern of any illegal activity involving more

1 than \$100,000 in a 12-month period shall be fined twice
2 the amount provided in subsection (b)(3) or (c)(3) (as the
3 case may be) of section 3571 of title 18, United States
4 Code, imprisoned for not more than 10 years, or both.

5 **SEC. 524. RELATION TO STATE LAWS.**

6 (a) IN GENERAL.—This subtitle shall not be con-
7 strued as superseding, altering, or affecting the statutes,
8 regulations, orders, or interpretations in effect in any
9 State, except to the extent that such statutes, regulations,
10 orders, or interpretations are inconsistent with the provi-
11 sions of this subtitle, and then only to the extent of the
12 inconsistency.

13 (b) GREATER PROTECTION UNDER STATE LAW.—
14 For purposes of this section, a State statute, regulation,
15 order, or interpretation is not inconsistent with the provi-
16 sions of this subtitle if the protection such statute, regula-
17 tion, order, or interpretation affords any person is greater
18 than the protection provided under this subtitle as deter-
19 mined by the Commission, on its own motion or upon the
20 petition of any interested party.

21 **SEC. 525. AGENCY GUIDANCE.**

22 In furtherance of the objectives of this subtitle, each
23 Federal banking agency (as defined in section 3(z) of the
24 Federal Deposit Insurance Act) and the Securities and
25 Exchange Commission or self-regulatory organizations, as

1 appropriate, shall review regulations and guidelines appli-
2 cable to financial institutions under their respective juris-
3 dictions and shall prescribe such revisions to such regula-
4 tions and guidelines as may be necessary to ensure that
5 such financial institutions have policies, procedures, and
6 controls in place to prevent the unauthorized disclosure
7 of customer financial information and to deter and detect
8 activities proscribed under section 521.

9 **SEC. 526. REPORTS.**

10 (a) REPORT TO THE CONGRESS.—Before the end of
11 the 18-month period beginning on the date of the enact-
12 ment of this Act, the Comptroller General, in consultation
13 with the Federal Trade Commission, Federal banking
14 agencies, the Securities and Exchange Commission, appro-
15 priate Federal law enforcement agencies, and appropriate
16 State insurance regulators, shall submit to the Congress
17 a report on the following:

18 (1) The efficacy and adequacy of the remedies
19 provided in this subtitle in addressing attempts to
20 obtain financial information by fraudulent means or
21 by false pretenses.

22 (2) Any recommendations for additional legisla-
23 tive or regulatory action to address threats to the
24 privacy of financial information created by attempts

1 to obtain information by fraudulent means or false
2 pretenses.

3 (b) ANNUAL REPORT BY ADMINISTERING AGEN-
4 CIES.—The Federal Trade Commission and the Attorney
5 General shall submit to Congress an annual report on
6 number and disposition of all enforcement actions taken
7 pursuant to this subtitle.

8 **SEC. 527. DEFINITIONS.**

9 For purposes of this subtitle, the following definitions
10 shall apply:

11 (1) CUSTOMER.—The term “customer” means,
12 with respect to a financial institution, any person (or
13 authorized representative of a person) to whom the
14 financial institution provides a product or service,
15 including that of acting as a fiduciary.

16 (2) CUSTOMER INFORMATION OF A FINANCIAL
17 INSTITUTION.—The term “customer information of
18 a financial institution” means any information main-
19 tained by or for a financial institution which is de-
20 rived from the relationship between the financial in-
21 stitution and a customer of the financial institution
22 and is identified with the customer.

23 (3) DOCUMENT.—The term “document” means
24 any information in any form.

25 (4) FINANCIAL INSTITUTION.—

1 (A) IN GENERAL.—The term “financial in-
2 stitution” means any institution engaged in the
3 business of providing financial services to cus-
4 tomers who maintain a credit, deposit, trust, or
5 other financial account or relationship with the
6 institution.

7 (B) CERTAIN FINANCIAL INSTITUTIONS
8 SPECIFICALLY INCLUDED.—The term “financial
9 institution” includes any depository institution
10 (as defined in section 19(b)(1)(A) of the Fed-
11 eral Reserve Act), any broker or dealer, any in-
12 vestment adviser or investment company, any
13 insurance company, any loan or finance com-
14 pany, any credit card issuer or operator of a
15 credit card system, and any consumer reporting
16 agency that compiles and maintains files on
17 consumers on a nationwide basis (as defined in
18 section 603(p)).

19 (C) SECURITIES INSTITUTIONS.—For pur-
20 poses of subparagraph (B)—

21 (i) the terms “broker” and “dealer”
22 have the meanings provided in section 3 of
23 the Securities Exchange Act of 1934 (15
24 U.S.C. 78e);

(iii) the term “investment company”
has the meaning provided in section 3 of
the Investment Company Act of 1940 (15
U.S.C. 80a-3).

(D) FURTHER DEFINITION BY REGULATION.—The Federal Trade Commission, after consultation with Federal banking agencies and the Securities and Exchange Commission, may prescribe regulations clarifying or describing the types of institutions which shall be treated as financial institutions for purposes of this subtitle.

Passed the House of Representatives July 1, 1999.

Attest: **JEFF TRANDAH**,
Clerk.